THE GENERAL STATUTES OF NORTH CAROLINA

1963 CUMULATIVE SUPPLEMENT

To Replacement Volume

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
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Volume 2C

Place in Pocket of Corresponding 1958 Replacement Volume of Main Set and Discard Previous Supplement

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Preface

This Cumulative Supplement to replacement volume 2C contains the general laws of a permanent nature enacted at the 1959, 1961 and 1963 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions.

An index to all statutes codified herein prior to 1961 appears in Replacement Volumes 4B and 4C. The Cumulative Supplement to such volumes contain an index to statutes codified as a result of the 1961 and 1963 legislative sessions.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

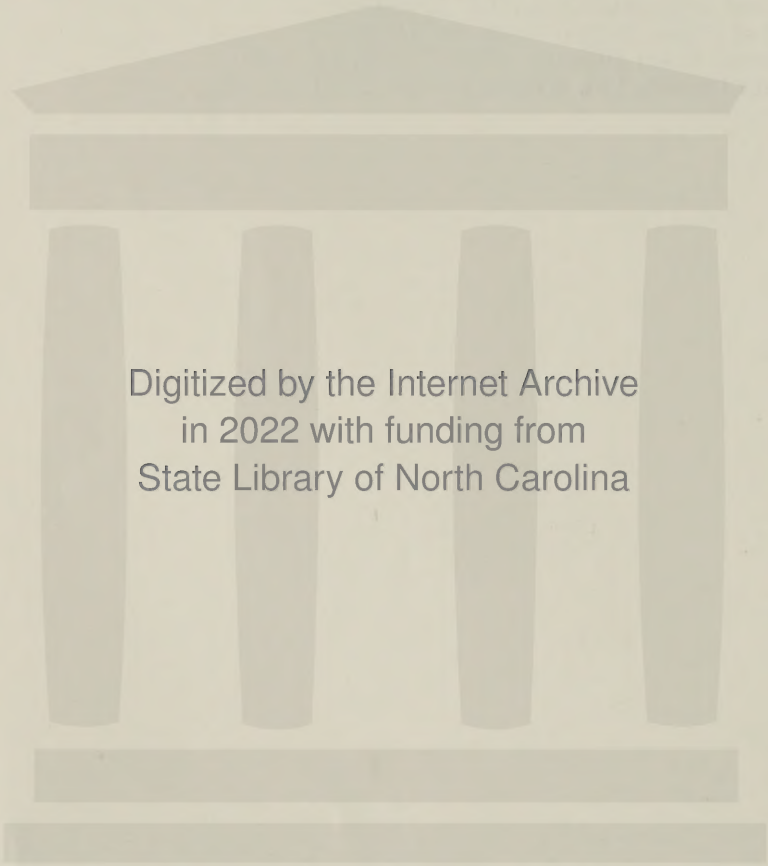
Statutes:

Permanent portions of the general laws enacted at the 1959, 1961 and 1963 Sessions of the General Assembly affecting Chapters 83 through 105 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 246 (p. 547)-260 (p. 132).
Federal Reporter 2nd Series volumes 245-316.
Federal Supplement volumes 152-216.
United States Reports volumes 354-372.
Supreme Court Reporter volumes 78-83 (p. 1559).
North Carolina Law Review volumes 32-41 (p. 662).



The General Statutes of North Carolina
1963 Cumulative Supplement

VOLUME 2C

Chapter 84.
Attorneys at Law.

ARTICLE 1.

Qualifications of Attorney; Unauthorized Practice of Law.

§ 84-2. Persons disqualified.

Local Modification. — New Hanover: 1959, c. 483.

§ 84-2.1. "Practice law" defined.

Practice of law embraces the preparation of legal documents and contracts by which legal rights are secured. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962).

Not All Activities within Definition Are Unlawful for Lay Persons.—It was not the purpose and intent of this section to make unlawful all activities of lay persons which come within the general definition of practicing law. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962). See note to § 84-4.

§ 84-4. Persons other than members of State Bar prohibited from practicing law.

Editor's Note.—

For note on unauthorized practice of law by corporations, see 41 N. C. Law Rev. 225.

For case law survey on unauthorized practice of law, see 41 N. C. Law Rev. 447.

The purpose of this section is for the better security of the people against incompetency and dishonesty in an area of activity affecting general welfare. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962); commented on in 41 N. C. Law Rev. 225.

Section Does Not Confer Absolute Monopoly in Preparation of Legal Documents.—This section was not enacted for the purpose of conferring upon the legal profession an absolute monopoly in the preparation of legal documents. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Persons Having Primary Interest in Transaction May Prepare Necessary Papers.—A person, firm or corporation having a primary interest, not merely an incidental interest, in a transaction, may prepare legal documents necessary to the furtherance and completion of the transaction without violating this section. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Automobile, furniture, and appliance dealers prepare conditional sale contracts. Banks prepare promissory notes, drafts and letters of credit. Many lending institutions prepare deeds of trust and chattel mortgages. Owner-vendors and purchasers of land prepare deeds. All such activities are legal and do not violate the statute so long as the actor has a primary interest in the transaction. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Preparation of Documents by Employees of Corporations.—A person who, in the course of his employment by a corporation, prepares a legal document in connection with a business transaction in which the corporation has a primary interest, the corporation being authorized by law and its charter to transact such business, does not violate the statute, for his act in so doing is the act of the corporation in the furtherance of its own business.

State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

A deed of trust is a legal document. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

The grantor or the beneficiary in a deed of trust may prepare the instrument with impunity if the latter is extending credit to the former; the named trustee may not do so, for his interest is only incidental. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Any adult person desiring to do so may prepare his own will. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

A person involved in litigation, though not a lawyer, may represent himself and either defend or prosecute the action or proceeding in a tribunal or court, even in Supreme Court, and may prepare and file pleadings and other papers in connection with the litigation. State v. Pledger, 257 N. C. 634, 127 S. E. (2d) 337 (1962), commented on in 41 N. C. Law Rev. 225.

Cited in North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 84-5. Prohibition as to practice of law by corporation.

Editor's Note.—

For comment on the 1955 amendment, see 33 N. C. Law Rev. 528.

§ 84-7. Solicitors, upon application, to bring injunction or criminal proceedings.

Cited in North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 84-10. Violation of preceding section a misdemeanor.

Cited in North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

ARTICLE 3.

Arguments.

§ 84-14. Court's control of argument.

Wide latitude is given counsel, etc.— In accord with original. See State v. Graves, 252 N. C. 779, 114 S. E. (2d) 770 (1960).

ARTICLE 4.

North Carolina State Bar.

§ 84-17. Government.—The Government of the North Carolina State Bar shall be vested in a council of the North Carolina State Bar, hereinafter referred to as the "council," consisting of one councilor from each judicial district of the State, to be appointed or elected as hereinafter set forth, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar whose term expires after October 1, 1961, who shall be a councilor for a term of three years from the date of the expiration of his term as president. Notwithstanding any provisions of this article as to the voting powers of members, the council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this article, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments hereto, and all other matters, except as otherwise directed or overruled, as in § 84-33 provided. The councilors elected shall serve as follows: Those elected from the first, fourth, seventh, tenth, thirteenth, sixteenth, and nineteenth districts shall serve for one year from the date of their elections; those elected from the second,

fifth, eighth, eleventh, fourteenth, seventeenth, and twentieth districts shall serve for two years from the date of their election; and those elected from the third, sixth, ninth, twelfth, fifteenth, and eighteenth districts shall serve for three years from the date of their election: Provided, that upon the election of successors to the councilors first elected, the term of office and the period for which such councilors are elected shall be three years from the date of election.

All councilors elected from any additional judicial district will be elected for a term of three years, except as may be hereinafter provided in G. S. 84-18 and G. S. 84-19. (1933, c. 210, s. 3; 1937, c. 51, s. 1; 1955, c. 651, s. 1; 1961, c. 641.)

Editor's Note.— The 1961 amendment, effective Oct. 1, 1961, rewrote the latter part of the first sentence.

§ **84-28. Discipline and disbarment.**—The council or any committee of its members appointed for that purpose, or designated by the Supreme Court,

(1) Shall have jurisdiction to hear and determine all complaints, allegations, or charges of malpractice, corrupt or unprofessional conduct, or the violation of professional ethics, made against any member of the North Carolina State Bar;

(2) May administer the punishments of private reprimand, suspension from the practice of law for a period not exceeding twelve months, and disbarment as the case shall in their judgment warrant, for any of the following causes:

a. Commission of a criminal offense showing professional unfitness;

b. Detention without a bona fide claim thereto of property received or money collected in any fiduciary capacity;

c. Soliciting professional business;

d. Conduct involving willful deceit or fraud or any other unprofessional conduct;

e. Detention without a bona fide claim thereto of property received or money collected in the capacity of attorney;

f. The violation of any of the canons of ethics which have been adopted and promulgated by the council of the North Carolina State Bar.

(3) May invoke the processes of the courts in any case in which they deem it desirable to do so and formulate rules of procedure governing the trial of any such person. Such rules shall make provision for:

a. Setting forth the charges in the form required for a complaint in a civil action in the superior court.

b. Notice of the charges by the service upon the person charged of a copy of the said complaint. Such service may be made by any officer authorized to serve legal processes wherever the person charged may be found.

c. The right of the defendant to file a written and verified answer in which he may plead any defense to the merits of the charge, the sufficiency of the charge as alleged, or any other defense available to him. All defenses must be asserted by verified answer.

d. The right of the person charged to demand a trial:

1. In the superior court at a regular term for the trial of civil cases by a judge and a jury, or by written agreement of all parties trial by jury may be waived and the facts found by the judge, or

2. By a committee of not less than three members of the Bar who are not members of the council and are actively practicing in the State, such committee to be designated by the Supreme Court, or

3. By a committee of not less than three members of the council. The election permitted shall be made in the answer, and if no election is made in the answer the person charged shall be conclusively deemed to have elected to be tried by a committee of the council. If the person charged shall not elect to be tried in the superior court in term as above provided, he shall be conclusively deemed to have waived all right to a trial by jury.

e. The certification, if the person charged shall elect to be tried in the superior court, of the original complaint and answer shall be made to the clerk of the superior court of the county in which such person shall reside if he resides in this State, or to the clerk of the superior court of Wake County if he does not reside in this State. The proceeding shall not be subject to dismissal if certification is made to the wrong county, but the person charged may move in the superior court to which certification is made for removal to the proper county. After certification all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions, with right of appeal to the Supreme Court.

f. For the trial of the person charged before a committee (if trial by a jury is waived) selected in accordance with the foregoing provisions, which trial shall conform as nearly as practicable to the procedure provided by law before referees in references by consent with the right to appeal to the superior court by the filing of exceptions with the council and from order or judgment of the council, the entire record shall be filed with the clerk of the superior court of the county in which the person charged resides if he resides within the State, or in Wake County if the person charged does not reside within the State, and thereafter all proceedings in connection with the charge shall be conducted in the superior court in term in accordance with the laws and rules relating to civil actions in which there has been a reference by consent, but neither party shall be entitled to a trial by jury. Both parties shall have the right to appeal to the Supreme Court in accordance with the procedure permitting appeals in civil actions.

Trial before the committee appointed for that purpose by the council, or designated by the Supreme Court, shall be held in the county in which the accused member resides or if the accused is residing outside of the State, then in Wake County: Provided, however, that the committee conducting the hearing shall have power to remove the same to any county in which the offense, or any part thereof, was committed, if in the opinion of such committee the ends of justice or convenience of witnesses require such removal. The procedure herein provided shall apply in all cases of discipline or disbarments arising under this section.

Whenever the council shall have directed a hearing upon any charges against a member of the bar and said member shall request it to do so, the council shall advise the Supreme Court of the same and request the Supreme Court, through the Chief Justice, to designate a committee of not less than three members of the bar who are not members of the council, and who are actively practicing in the State, to sit as a trial committee to hear the cause; said committee when so designated shall proceed in the same manner as in the case of a committee of the council and under the same procedures set forth herein or as prescribed by rules

adopted by the council and approved by the Supreme Court. (1933, c. 210, s. 11; 1937, c. 51, s. 3; 1959, c. 1282, ss. 1, 2; 1961, c. 1075.)

Editor's Note.—

The 1959 amendment added the words "or designated by the Supreme Court" in the introductory paragraph. It also added the last paragraph and made changes in the next to last paragraph. Section 3 of the amendatory act provides: "This act shall not apply to any causes which have been heard before a trial committee or which are pending on appeal to the courts."

The 1961 amendment, effective July 1, 1961, rewrote subdivision (3).

Rule-Making Power of Council of North Carolina State Bar. — The 1937 amendment to this section, providing that the council of the North Carolina State Bar should have power to formulate rules of procedure governing disbarment proceedings which shall conform as near as may be to the procedure provided by law for hearings before referees in compulsory references, relates to the formulation of rules of procedure incident to hearings before the council or the trial committee and not to procedure upon appeal to the superior court. In re Gilliland, 248 N. C. 517, 103 S. E. (2d) 807 (1958).

Proceedings Are Civil in Nature.—The proceedings under each method by which disciplinary action or disbarment may be imposed partake of the nature of civil actions. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

In North Carolina there are two methods by which disciplinary action or disbarment may be imposed upon attorneys —statutory and judicial. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

The statutory method by which disciplinary action or disbarment may be imposed provides for written complaint, notice to accused, opportunity to answer and be represented by counsel, hearing before a committee conducting proceedings in the nature of a reference, and trial by jury unless waived. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Inherent Powers of Court Not Abridged. —Nothing contained in the statutes concerning discipline or disbarment is to be construed as disabling or abridging the inherent powers of the court to deal with its attorneys. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Summary Disbarment by Court in Criminal Prosecution. — Where an attorney is on trial, charged with a criminal offense involving moral turpitude and amounting to a felony, and pleads guilty, or is convicted, or pleads nolo contendere with agreement that he will surrender his license, the court conducting the criminal trial has authority to disbar him summarily without further proceedings, and on appeal the Supreme Court may do likewise upon motion of the Attorney General. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

When Due Process Requires Notice and Opportunity to Be Heard. — Where the attorney pleads guilty or is convicted in another court, or the conduct complained of is not related to litigation pending before the court investigating attorney's alleged misconduct, the procedure, to meet the test of due process, must be initiated by a sworn written complaint, and the court should issue a rule or order advising the attorney to the specific charges, directing him to show cause why disciplinary action should not be taken, and granting a reasonable time for answering and preparation of defense, and attorney should be given full opportunity to be heard and permitted to have counsel for his defense. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Committee to Investigate Facts. — Where issues of fact are raised the court may appoint a committee to investigate and make report. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Trial by Jury.—Neither this section nor the Rules and Regulations of the North Carolina State Bar contain any provision sufficient to deprive a respondent in disbarment proceedings of the right expressly conferred by this section, upon appeal from the council of the North Carolina State Bar, to a trial by jury on the written evidence of the issues of fact arising on the pleadings. In re Gilliland, 248 N. C. 517, 103 S. E. (2d) 807 (1958).

§ 84-29. Concerning evidence and witness fees.—In any investigation of charges of professional misconduct the council and any committee thereof, and any committee designated by the Supreme Court, shall have power to summon and examine witnesses under oath, and to compel their attendance, and the production of books, papers, and other documents or writings deemed by it necessary or material to the inquiry. Each summons or subpoena shall be issued under the

hand of the secretary-treasurer or the president of the council or the chairman of the committee appointed to hear the charges, and shall have the force and effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the council or its committee, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings; but the council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before the council or any committee thereof or any committee designated by the Supreme Court or by deposition shall be entitled to the same fees as in civil actions.

In cases heard before the council or any committee thereof or any committee designated by the Supreme Court, if the party shall be convicted of the charges against him, he shall be taxed with the cost of the hearings: Provided, however, that such bill of costs shall not include any compensation to the members of the council or committee before whom the hearings are conducted. (1933, c. 210, s. 12; 1959, c. 1282, s. 2.)

Editor's Note.—The 1959 amendment inserted the references to committee designated by the Supreme Court. And see note under § 84-28.

§ 84-30. Rights of accused person. — Any person who shall stand charged with an offense cognizable by the council or any committee thereof, or any committee designated by the Supreme Court, shall have the right to invoke and have exercised in his favor the powers of the council and its committees, or any committee designated by the Supreme Court, in respect of compulsory process for witnesses and for the production of books, papers, and other writings and documents, and shall also have the right to be represented by counsel. (1933, c. 210, s. 13; 1959, c. 1282, s. 2.)

Editor's Note.—The 1959 amendment inserted the references to committee designated by the Supreme Court. And see note under § 84-28.

Deprivation of Right to Practice Is Judicial Act Requiring Due Process.—The granting of a license to engage in business or practice a profession is a right conferred by administrative act, but the deprivation of the right is a judicial act requiring due process. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

§ 84-32. Records and judgments and their effect; restoration of licenses. — In the case of persons charged with an offense cognizable by the council or any committee thereof, or any committee designated by the Supreme Court, a complete record of the proceedings and evidence taken before the council or any committee thereof, or any committee designated by the Supreme Court, shall be made and preserved in the office of the secretary-treasurer, but the council may, upon sufficient cause shown and with the consent of the person so charged, cause the same to be expunged and destroyed. Final judgments of suspension or disbarment shall be entered upon the judgment docket of the superior court of the county wherein the accused resides, and also upon the minutes of the Supreme Court of North Carolina; and such judgment shall be effective throughout the State.

Whenever an attorney desires to voluntarily surrender his license to the council and the council consents to accept the same, he shall make such request and surrender in writing directed to the council and the council shall enter an order containing the conditions of acceptance of said license and a copy of such order shall be filed with the clerk of the Supreme Court and with the clerk of the superior court of the county of residence or prior residence of the licensee; provided, however, that the council may refuse to accept surrender of license in any case.

Whenever any attorney has been deprived of his license, the council, in its dis-

cretion, may restore said license upon due notice being given and hearing had and satisfactory evidence produced of proper reformation of the licentiate before restoration. (1933, c. 210, s. 15; 1935, c. 74, s. 2; 1953, c. 1310, s. 4; 1959, c. 1282, s. 2.)

Editor's Note.—

The 1959 amendment inserted in the first paragraph the references to the committee designated by the Supreme Court. And see note under § 84-28.

§ **84-34. Membership fees and list of members.**—Every active member of the North Carolina State Bar shall on or before the first day of January, nineteen hundred and thirty-four, pay to the secretary-treasurer, without demand therefor, in respect of the calendar year nineteen hundred and thirty-three, a membership fee of three dollars, and shall thereafter, prior to the first day of July of each year, beginning with and including the year nineteen hundred and thirty-four, pay to the secretary-treasurer, in respect of the calendar year in which such payment is herein directed to be made, an annual membership fee of three dollars, and shall thereafter, prior to the first day of July of each year, beginning with the calendar year one thousand nine hundred and thirty-nine, pay to the secretary-treasurer, in respect to the calendar year in which such payment is herein directed to be made, an annual membership fee of five dollars; and shall thereafter, prior to the first day of July, beginning with the calendar year 1955, pay to the secretary-treasurer, in respect to the calendar year in which such payment is herein directed to be made, an annual membership fee of ten dollars ($10.00); and in every case the member so paying shall notify the secretary-treasurer of his correct post-office address; and shall thereafter, by the first day of July of each year beginning with and including the year 1961, pay to the secretary-treasurer in respect to the calendar year in which such payment is herein directed to be made, an annual membership fee of twenty dollars ($20.00), and every member shall notify the secretary-treasurer of his correct post-office address. The said membership fee shall be regarded as a service charge for the maintenance of the several services prescribed in this article, and shall be in addition to all fees now required in connection with admissions to practice, and in addition to all license taxes now or hereafter required by law. The said fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this article shall have gone into effect until the first day of July of the second calendar year (a "calendar year" for the purposes of this article being treated as the period from January first to December thirty-first) following that in which he shall have been licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The said fees shall be disbursed by the secretary-treasurer on the order of the council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the council, publish an account of the financial transactions of the council, in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and post-office addresses forwarded to him and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this article. The name of each of the active members who shall be in arrears in the payment of membership fees for one or more calendar years shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein said member or members reside, and the court shall thereupon take such action as is necessary and proper. The names and addresses of such attorneys so certified shall be kept available to the public. The Commissioner of Revenue is hereby directed to supply the secretary-treasurer, from his record of license tax payments, with any information for which the

secretary-treasurer may call in order to enable him to comply with this requirement.

The said list submitted to the several clerks of the superior court shall also be submitted to the council of the North Carolina State Bar at its October meeting of each year and it shall take such action thereon as is necessary and proper. (1933, c. 210, s. 17; 1939, c. 21, ss. 2, 3; 1953, c. 1310, s. 5; 1955, c. 651, s. 4; 1961, c. 760.)

Editor's Note.—
The 1961 amendment added that part of the first sentence beginning after the semicolon in line seventeen.

§ 84-36. Inherent powers of courts unaffected.

Due Process Required.—While it is incontrovertible that our courts have inherent authority to take disciplinary action against attorneys practicing therein, even in relation to matters not depending in the particular court exercising that authority, it is not after the manner of our courts, however, to deprive a lawyer, any more than anyone else, of his constitutional guaranties or to revoke his license without due process of law. In re Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Chapter 85A.

Bail Bondsmen and Runners.

§ 85A-1. Definitions.—The following words when used in this chapter shall have the following meanings:

(1) "Commissioner" shall mean the Commissioner of Insurance.

(2) "Insurer" shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.

(3) "Bail bondsman" shall mean a surety bondsman, professional bondsman or a property bondsman as hereinafter defined.

(4) "Surety bondsman" shall mean any person who has been approved by the Commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and receives or is promised money or other things of value therefor.

(5) "Professional bondsman" shall mean any person who has been approved by the Commissioner and who pledges cash or approved unregistered bonds as security for a bail bond in connection with a judicial proceeding and receives or is promised money or other things of value.

(6) "Property bondsman" is a person or persons who pledge real or other property as security for a bail bond in a judicial proceeding and receives or is promised money or other things of value therefor.

(7) "Runner" shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance. This does not affect the right of bail bondsman to hire counsel or to ask assistance of law enforcement officers. (1963, c. 1225, s. 1.)

Editor's Note.—The act inserting this chapter is effective Jan. 1, 1964.

§ 85A-2. Commissioner of Insurance to administer chapter; rules and regulations; employees; evidence of Commissioner's actions.—(a) The Commissioner shall have full power and authority to administer the provisions of this chapter, which regulates bail bondsmen and runners and to that end to adopt, and promulgate rules and regulations to enforce the purposes and provisions of this chapter. Subject to the provisions of the State Personnel Act, the Commissioner may employ and discharge such employees, examiners, and such other assistants as shall be deemed necessary, and he shall prescribe their duties.

(b) Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the Commissioner, or any record of the Commissioner authenticated under the hand of the Commissioner by the seal of his office shall be accepted by all the courts of this State as prima facie evidence of the contents thereof. (1963, c. 1225, s. 2.)

§ 85A-3. Defects not to invalidate undertakings; liability not affected by agreement or lack of qualifications.—No undertaking shall be invalid, nor shall any person be discharged from his undertaking, nor a forfeiture thereof be stayed nor shall judgment thereon be stayed, set aside or reversed, the collection of any such judgment be barred or defeated by reason of any defect or form, omission or recital or of condition, failure to note or record the de-

fault of any principal or surety, or because of any other irregularity, or because the undertaking was entered into on Sunday or other holiday, if it appears from the tenor of the undertaking before what magistrate or at what court the principal was bound to appear, and that the official before whom it was entered into was legally authorized to take it and the amount of bail is stated.

The liability of a person on an undertaking shall not be affected by reason of the lack of any qualifications, sufficiency or competency provided in the criminal procedure law, or by reason of any other agreement that is expressed in the undertaking, or because the defendant has not joined in the undertaking. (1963, c. 1225, s. 3.)

§ 85A-4. Qualifications of sureties on bail.—Each and every surety for the release of a person on bail shall be qualified as:

(1) An insurer and represented by a surety bondsman or bondsmen; or
(2) A professional bondsman properly qualified and approved by the Commissioner; or
(3) A natural person who has reached the age of 21 years, a citizen of the United States and a bona fide resident of North Carolina for a period of one (1) year immediately last past and who holds record title to property in North Carolina acceptable to the proper authority approving the bail bond. (1963, c. 1225, s. 4.)

§ 85A-5. Surrender of defendant by surety or personally; when premium need not be returned.—At any time before there has been a breach of the undertaking in any type of bail or fine and cash bond the surety may surrender the defendant, or the defendant may surrender himself, to the official to whose custody the defendant was committed at the time bail was taken, or to the official into whose custody the defendant would have been given had he been committed. The defendant may be surrendered without the return of premium for the bond if he has been guilty of nonpayment of premium, changing address without notifying his bondsman, conceals himself, or leaves the jurisdiction of the court without the permission of his bondsman, or of violating his contract with the bondsman in any way that does harm to the bondsman, or the surety, or violates his obligation to the court. (1963, c. 1225, s. 5.)

§ 85A-6. Procedure for surrender; exoneration of obligors; refund of deposit.—The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.

Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal, as the case may be, is pending, shall upon notice of three (3) days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings; and, if money or bonds have been deposited as bail, that such money or bonds be refunded. (1963, c. 1225, s. 6.)

§ 85A-7. Arrest of defendant for purpose of surrender.—For the purpose of surrendering the defendant, the surety may arrest him before the forfeiture of the undertaking, or by written authority endorsed on a certified copy of the undertaking, may empower any peace officer to make arrest, first paying the lawful fees therefor. (1963, c. 1225, s. 7.)

§ **85A-8. Forfeiture of bail.**—The procedure for forfeiture of bail shall be that provided in article 11 of chapter 15 of the General Statutes and all provisions of that article shall continue in full force and effect except to the extent of direct conflict, if any, with this chapter. (1963, c. 1225, s. 8.)

§ **85A-9. Bail bondsmen and runners to be qualified and licensed; exceptions; only individuals to be licensed; license applications generally.**—No person shall act in the capacity of a bail bondsman or runner or perform any of the functions, duties or powers prescribed for bail bondsmen or runner under the provisions of this chapter unless that person shall be qualified and licensed as provided in this chapter: Provided, however, that none of the provisions or terms of this section shall prohibit any individual or individuals, from pledging real or other property as security for a bail bond in judicial proceedings and who does not receive, or is not promised, money, or other things of value therefor.

No license shall be issued except in compliance with this chapter and none shall be issued except to an individual: Provided, however, that upon the taking effect of this chapter, any person then performing the functions of a bail bondsman or runner, within the definition of this chapter, shall not be required to take an examination, but shall be issued a license upon making the application herein required, and renewals thereof shall be granted subject to the provisions of §§ 85A-10, 85A-11 and 85A-17 of this chapter: Provided, further, that the provisions of this chapter shall not apply to the holder of a valid all lines fire and casualty agent's license.

A firm, partnership, association, or corporation, as such shall not be licensed.

The applicant shall apply in writing on forms prepared and supplied by the Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this chapter or on any renewal thereof, relating to his qualifications, residence, prospective place of business, and any other matters which, in the opinion of the Commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation he sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

The failure of the applicant to secure approval of the Commissioner shall not preclude him from applying as many times as he desires, but no application shall be considered by the Commissioner within one (1) year subsequent to the date upon which the Commissioner denied the last application. (1963, c. 1225, s. 9.)

§ **85A-10. Expiration of licenses.**—All licenses issued shall expire annually on June 30 unless revoked or suspended prior thereto by the Commissioner, or upon notice served upon the Commissioner that the insurer or employer of any runner has cancelled the licensee's authority to act for such insurer or employer. (1963, c. 1225, s. 10.)

§ **85A-11. Contents of application for bail bondman's license.**—The application for license in addition to the matters set out in § 85A-9, to serve as a bail bondsman must affirmatively show:

Applicant is a natural person who has reached the age of 21 years; is a citizen of the United States, and has been a bona fide resident of the state for one (1) year last past, will actively engage in the bail bond business, and has knowledge, experience or instruction in the bail bond business, or has held a valid all lines fire and casualty agent's license for one (1) year within the last five (5) years; or has been employed by a company engaged in writing bail bonds in which field he has actively engaged for at least one (1) year of the last five (5) years; or is actively engaged in bail bond business at the time this chapter is passed. (1963, c. 1225, s. 11.)

§ 85A-12. License fee; fingerprints.—A license fee of ten dollars ($10.00) shall be submitted to the Commissioner with each application.

Applicant shall also furnish with his application, a complete set of his fingerprints and a recent credential-size full face photograph of himself. The applicant's fingerprints shall be certified by an authorized law enforcement officer. (1963, c. 1225, s. 12.)

§ 85A-13. Annual financial statement of professional bondsman.—In addition to the requirements prescribed in § 85A-11 above, an applicant for a professional bondsman license shall furnish annually a detailed financial statement under oath, and such statement shall be subject to the same examination as is prescribed by law for domestic insurance companies. (1963, c. 1225, s. 13.)

§ 85A-14. Contents of application for runner's license; endorsement by bail bondsman; fee; fingerprints and photograph.—In addition to the requirements prescribed in § 85A-9 above, an applicant for a license to serve as a runner must affirmatively show:

That the applicant is a natural person who has reached the age of 21 years;

The applicant is a citizen of the United States; has been a bona fide resident of this State for more than six (6) months last past;

That the applicant will be employed by only one bail bondsman, who will supervise the work of the applicant, and be responsible for the runner's conduct in the bail bond business; and

The application must be endorsed by the appointing bail bondsman, who shall obligate himself to supervise the runner's activities in his behalf.

A license fee of ten dollars ($10.00) shall be submitted to the Commissioner with each application, together with fingerprints and photograph. (1963, c. 1225, s. 14.)

§ 85A-15. Examinations; fees.—The applicant shall be required to appear in person and take a written examination prepared by the Commissioner, testing his ability and qualifications to be a bail bondsman or runner.

Each applicant shall become eligible for examination sixty (60) days after the date the application is received by the Commissioner, if the Commissioner is satisfied as to the applicant's fitness to take the examination. Examinations shall be held at such times and places as designated by the Commissioner, and applicant shall be given notice of such time and place not less than fifteen (15) days prior to taking the examination.

The fee for such examination shall be ten dollars ($10.00) and shall be submitted with the application.

The failure of an applicant to pass an examination shall not preclude him from taking subsequent examinations: Provided, however, that at least one (1) year must intervene between examinations. (1963, c. 1225, s. 15.)

§ 85A-16. Renewal of licenses; fees.—A renewal license shall be issued by the Commissioner to a licensee who has continuously maintained same in effect without further examination, unless deemed necessary by the Commissioner, upon the payment of a renewal fee of ten dollars ($10.00), but such licensee shall in all other respects be required to comply with and be subject to the provisions of this chapter. After the receipt of such licensee's application for renewal the current license shall continue in effect until the renewal license is issued or denied for cause. (1963, c. 1225, s. 16.)

§ 85A-17. Grounds for denial, suspension, revocation or refusal to renew licenses.—The Commissioner may deny, suspend, revoke or refuse to renew any license issued under this chapter for any of the following causes:

(1) For any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner.

(2) Violation of any laws of this State relating to bail in the course of dealings under the license issued him by the Commissioner.
(3) Material misstatement, misrepresentation or fraud in obtaining the license.
(4) Misappropriation, conversion or unlawful withholding of moneys, belonging to insurers or others and received in the conduct of business under the license.
(5) Conviction of a felony involving moral turpitude.
(6) Fraudulent or dishonest practices in the conduct of business under the license.
(7) Willful failure to comply with, or willful violation of any proper order, rule or regulation of the Commissioner.
(8) When, in the judgment of the Commissioner, the licensee has, in the conduct of the affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering him unfit to carry on the bail bond business or making his continuance in such business detrimental to the public interest, or that he is no longer in good faith carrying on the bail bond business, or that he is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide his commissions in the case of limited surety agents, or premiums in the case of professional bondsman, and for such reasons is found by the Commissioner to be a source of detriment, injury or loss to the public. (1963, c. 1225, s. 17.)

§ 85A-18. Procedure for suspending or revoking licenses.—If, after investigation, it shall appear to the satisfaction of the Commissioner that a bail bondsman or runner has been guilty of violating any of the laws of this State relating to bail bonds, the Commissioner shall, upon ten days' notice in writing to the bail bondsman or runner and to the insurer represented by him if a surety bondsman, accompanied by a copy of the charges of the unlawful conduct of such bail bondsman or runner, suspend the license of such bail bondsman or runner, unless on or before the expiration of the ten (10) days the bail bondsman or runner shall make the Commissioner answer to the charges. If, after the expiration of said ten (10) days, and within twenty (20) days thereafter, the bail bondsman or runner shall have failed to make answer or deny said charges license of the bail bondsman or runner shall thereupon stand revoked. If, however, the bail bondsman or runner shall file written answer denying the charges within the time specified, the Commissioner shall call a hearing within a reasonable time for the purpose of taking testimony and evidence on any issue of fact made by the charges and answer. The Commissioner shall give notice to such bail bondsman or runner and to the insurer represented by him, if a surety bondsman, of the time and place of the hearing. The parties shall have the right to produce witnesses, and to appear personally or by counsel. If upon such hearing the Commissioner shall determine that the bail bondsman or runner is guilty as alleged in said charges, he shall thereupon revoke the license of the bail bondsman or runner or suspend him for a definite period of time to be fixed in the order of suspension. (1963, c. 1225, s. 18.)

§ 85A-19. Appeal from denial, suspension, revocation or refusal to renew license.—Any applicant for license as bail bondsman or runner whose application has been denied or whose license shall have been so suspended or revoked, or renewal thereof denied, shall have the right of appeal from such final order of the Commissioner thereon to the superior court of the county from which the bail bondsman or runner applied for his license, and such appeal shall be heard de novo. (1963, c. 1225, s. 19.)

§ 85A-20. Prohibited practices.—No bail bondsman or runner shall:
Suggest or advise the employment of or name for employment any particular attorney to represent his principal.

Pay a fee or rebate or give or promise anything of value to a jailer, policeman, peace officer, committing magistrate, or any other person who has power to arrest or hold in custody; or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof.

Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.

Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety.

Accept anything of value from a principal except the premium, provided that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

Solicit business in or about any place where prisoners are confined. (1963, c. 1225, s. 20.)

§ **85A-21. Receipts for collateral.**—When a bail bondsman accepts collateral he shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received. (1963, c. 1225, s. 21.)

§ **85A-22. Persons not to be bondsmen or runners.**—The following persons or classes shall not be bail bondsmen or runners and shall not directly or indirectly receive any benefits from the execution of any bail bond: Jailers, police officers, committing magistrates, justices of the peace, municipal or magistrate court judges, sheriffs, deputy sheriffs and constables, any person having the power to arrest or having anything to do with the control of federal, State, county or municipal prisoners. (1963, c. 1225, s. 22.)

§ **85A-23. Bonds not to be signed in blank; authority to countersign only given to licensed employee.**—A bail bondsman shall not sign nor countersign in blank any bond, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so authorized is a licensed bondsman directly employed by the bondsman giving such power of attorney. (1963, c. 1225, s. 23.)

§ **85A-24. Insurers to annually report surety bondsmen; notices of appointments and terminations; information confidential.**—Every insurer shall annually, prior to July 1, furnish the Commissioner a list of all surety bondsmen appointed by it to write bail bonds on its behalf. Every such insurer who subsequently appoints a surety bondsman in the State, shall give notice thereof to the Commissioner along with a written application for license for said bondsman. All such appointments shall be subject to the issuance of a license to such surety bondsman.

An insurer terminating the appointment of a surety bondsman shall file written notice thereof with the Commissioner, together with a statement that it has given or mailed notice to the surety bondsman. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in or basis for any action against the insurer or any of its representatives. (1963, c. 1225, s. 24.)

§ **85A-25. Bail bondsman to give notice of discontinuance of business; cancellation of license.**—Any bail bondsman who discontinues writing bail bonds during the period for which he is licensed shall notify the clerks of the superior court and the sheriffs with whom he is registered and return his license

to the Commissioner for cancellation within thirty (30) days for such discontinuance. (1963, c. 1225, s. 25.)

§ 85A-26. Persons eligible as runners; bail bondsmen to annually report runners; notices of appointments and terminations; information confidential.—Every person duly licensed as a bail bondsman may appoint as runner any person who holds or has qualified for a runner's license. Each bail bondsman must, on or before July 1 of each year, furnish to the Commissioner a list of all runners appointed by him. Each such bail bondsman who shall, subsequent to the filing of this list, appoint additional persons as runners shall file written notice with the Commissioner of such appointment.

A bail bondsman terminating the appointment of a runner shall file written notice thereof with the Commissioner, together with a statement that he has given or mailed notice to the runner. Such notice filed with the Commissioner shall state the reasons, if any, for such termination. Information so furnished the Commissioner shall be privileged and shall not be used as evidence in any action against the bail bondsman. (1963, c. 1225, s. 26.)

§ 85A-27. Substituting bail by sureties for deposit. — If money or bonds have been deposited, bail by sureties may be substituted therefor at any time before a breach of the undertaking, and the official taking the new bail shall make an order that the money or bonds be refunded to the person depositing the same and they shall be refunded accordingly, and the original undertakings shall be cancelled. (1963, c. 1225, s. 27.)

§ 85A-28. Deposit for defendant admitted to bail authorizes release and cancellation of undertaking.—When the defendant has been admitted to bail, he, or another in his behalf, may deposit with an official authorized to take bail, a sum of money, or nonregistered bonds of the United States, or of the State, or of any county, city or town within the State, equal in market value to the amount of such bail, together with his personal undertaking, and an undertaking of such other person, if the money or bonds are deposited by another. Upon delivery to the official in whose custody the defendant is of a certificate of such deposit, he shall be discharged from custody in the cause.

When bail other than a deposit of money or bonds has been given, the defendant or the surety may, at any time before a breach of the undertaking, deposit the sum mentioned in the undertaking, and upon such deposit being made, accompanied by a new undertaking, the original undertaking shall be cancelled. (1963, c. 1225, s. 28.)

§ 85A-29. Professional bondsmen to make deposit with Commissioner; refusal, suspension or revocation of license for false financial statement.—Professional bondsmen shall, before writing cash or security bail bonds, deposit with the Commissioner in the same manner as required of domestic insurance companies, an amount determined by the Commissioner not less than twenty-five thousand dollars ($25,000.00) but not more than fifty thousand dollars ($50,000.00). Such deposit shall be subject to all laws, rules and regulations as to guaranty funds of domestic insurance companies.

A license may be refused, suspended or cancelled by the Commissioner at any time he determines that the financial statement filed by the applicant or professional bondsman is inadequate to meet the requirements of the Commissioner. (1963, c. 1225, s. 29.)

§ 85A-30. Affidavit by property bondsman; penalty for misstatements; actions limited to agreements and security set forth in affidavit. —Every property bondsman shall file with the undertaking an affidavit stating whether or not he or any one for his use has been promised or has received any security or consideration for his undertaking, and if so, the nature and amount

thereof, and the name of the person by whom such promise was made or from whom such security or consideration was received. Any willful misstatement in such affidavit relating to the security or consideration promised or given shall render the person making it subject to the same prosecution and penalty as one who commits perjury. An action to enforce any indemnity agreement shall not lie in favor of the surety against such indemnitor, except with respect to agreements set forth in such affidavit. In an action by the indemnitor against the surety to recover any collateral or security given by the indemnitor, such surety shall have the right to retain only such security or collateral as is mentioned in the affidavit required above. (1963, c. 1225, s. 30.)

§ **85A-31. Registration of licenses and appointments by insurers.**— No bail bondsman shall become a surety on an undertaking unless he has registered his license in the office of the sheriff and with the clerk of the superior court in the county in which the bondsman resides and he may then become such surety in any other county upon presenting to the official required to approve the sufficiency of bail, a certificate of such registration. A surety bondsman shall also file a certified copy of his appointment by power of attorney from each insurer which he represents as agent with each of said officers. Registration and filing of certified copy of renewed power of attorney shall be performed annually on July 1. The clerk of the superior court and the sheriff shall not permit the registration of a bail bondsman unless such bondsman is currently licensed by the Commissioner. (1963, c. 1225, s. 31.)

§ **85A-32. Disposition of fees.**—Fees collected by the Commissioner pursuant to this chapter shall be paid into the general fund of the State. (1963, c. 1225, s. 32.)

§ **85A-33. Penalties for violations.** — Any person, firm, association or corporation violating any of the provisions of this chapter shall, upon conviction, be fined not more than five hundred dollars ($500.00) for each offense, or imprisoned in the county jail for not more than six (6) months, or both. (1963, c. 1225, s. 33.)

§ **85A-34. Counties subject to chapter.**—This chapter shall apply to the following counties: Beaufort, Buncombe, Caldwell, Cleveland, Columbus, Currituck, Greene, Guilford, Hyde, Iredell, Jackson, Lenoir, Madison, McDowell, Person, Richmond, Rutherford, Transylvania, Yadkin and Yancey. (1963, c. 1225, s. 34.)

Chapter 86.

Barbers.

§ **86-3. Qualifications for issuance of certificates of registration.**— No person shall be issued a certificate of registration as a registered apprentice by the State Board of Barber Examiners, hereinafter established:

(1) Unless such person is at least seventeen years of age.

(2) Unless such person passes a satisfactory physical examination prescribed by said Board of Barber Examiners.

(3) Unless each person has completed at least an eight months' course in a reliable barber school or college approved by said Board of Barber Examiners.

(4) Unless such person passes the examination prescribed by the Board of Barber Examiners and pays the required fees hereinafter enumerated. (1929, c. 119, s. 3; 1961, c. 577, s. 1.)

Editor's Note. — The 1961 amendment substituted "eight" for "six" in line one of subdivision (3).

§ 86-12. **Barbers from other states; temporary permits; graduates of out-of-State barber schools.**—Persons who have practiced barbering in another state or country for a period of not less than five years, and who move into this State, shall prove and demonstrate their fitness to the Board of Barber Examiners, as herein created, before they will be issued a certificate of registration to practice barbering, but said Board may issue such temporary permits as are necessary.

Any person who has graduated from a barber school in any other state having substantially the same standards as are required of barber schools in this State and who is otherwise qualified as required by this chapter, shall be allowed, upon making the application and paying the fee required by this chapter, to take the examination for a certificate of registration as a registered barber or as a registered apprentice, as the case may be. And the State Board of Barber Examiners shall issue a proper certificate to each such person who passes such examination. When any such person makes application for permission to take an examination, it shall be the duty of the State Board of Barber Examiners to ascertain and determine whether the barber school from which such person has graduated has substantially the same standards as are required of barber schools in this State. (1929, c. 119, s. 12; 1941, c. 375, s. 5; 1947, c. 1024; 1961, c. 577, s. 2.)

Editor's Note.—

The 1961 amendment substituted "five" for "two" in line two.

§ 86-17. **Sanitary rules and regulations; inspection.**—(a) Each barber and each owner or manager of a barber shop, barber school or college, or any other place where barber service is rendered, shall comply with the following sanitary rules and regulations:

(1) Inspection.—All barber shops, or barber schools and colleges, or any other place where barber service is rendered, shall be open for inspection at all times during business hours to any members of the Board of Barber Examiners, or its agents or assistants.

(2) Proper Quarters.—Every barber shop, or any other place where barber service is rendered, shall be located in buildings or rooms of such construction that the same may be easily cleaned.

(3) Barber Shops.—Every barber shop, or barber school, or barber college, or any other place where barber service is rendered, shall be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition.

(4) Position of Barber Shops.—Any room or place for barbering is prohibited which is used for other purposes, unless such a substantial partition or wall of ceiling height, separates such portion used for barber shops, or any place where barber service is rendered. However, this rule shall apply to sanitation only as determined by the discretion of the inspector.

(5) Walls and Floors.—The floors, walls, and ceiling of all barber shops, or barber schools and colleges, or any other place where barber service is rendered, must be kept clean and sanitary at all times.

(6) Fixture Conditions.—Work stands or cabinets, and chairs and fixtures of all barber shops, or any other place where barber service is rendered must be kept clean and sanitary at all times. All lavatories, towel urns, paper jars, cuspidors, and all receptacles containing cosmetics of any nature must be kept clean at all times.

(7) Tools and Instruments.—Every owner or manager of each barber shop shall supply a separate tool cabinet, having a door as near airtight as possible, for himself and each barber employed. All tools and instruments shall be kept clean and sanitary at all times and shall be kept in tool cabinets, and shall not be placed in drawers or on work stands.

Cabinets shall be of such construction as to be easily cleaned and shall be clean and sanitary at all times.

(8) Water.—All barber shops, or any other place where barber service is rendered, located in towns or cities having a water system shall be required to connect with said water system. Running water, hot and cold, shall be provided, and lavatories shall be located at a convenient place in each barber shop.

All barber shops or any other place where barber service is rendered, not located in cities or towns having water systems must supply hot and cold water under pressure in tank to hold not less than five gallons, and said tanks must be connected with a lavatory. Tanks and lavatory shall be of such construction that they may be easily cleaned. Said lavatory must have a drain pipe to drain all waste water out of the building. The dipping of shaving mugs and towels, etc., into water receptacles is prohibited.

(9) Styptic Pencil and Alum.—No person serving as a barber shall, to stop the flow of blood, use alum or other material unless the same be used in liquid or powder form with clean towels. The use of common styptic pencil or lump alum shall not be permitted for any purpose.

(10) Instruments.—Each person serving as a barber, shall, immediately before using razors, tweezers, combs, contact cup or pad of vibrator or massage machine, sterilize same by immersing in a solution of fifty per cent (50%) alcohol, five per cent (5%) carbolic acid twenty per cent (20%) formaldehyde, or ten per cent (10%) lysol or any other product or solution that the Board may approve. Every owner or manager of each barber shop shall supply a separate container for each barber adequate to provide for a sufficient supply of the above solutions.

(11) Hair Brushes and Combs.—Each barber shall maintain combs and hair brushes in clean and sanitary manner at all times, and each hair brush shall be thoroughly washed with hot water and soap before each separate use.

(12) Mugs and Brushes.—Each barber shall thoroughly clean mug and lather brush before each separate use and same must be kept clean and sanitary at all times.

(13) Headrest.—The headrest of every barber chair shall be protected with fresh, clean paper or clean laundered towel before its use for any person.

(14) Towels.—Each and every person serving as a barber shall use a clean freshly laundered towel for each patron. This applies to every kind of towel, dry towel, steam towel, or washcloth. All clean towels shall be placed in closed cabinets until used. Receptacles composed of material that can be washed and cleansed, shall be provided to receive used towels and all used towels must be discarded in said receptacles until laundered. Towels shall not be placed in a sterilizer or tank or rinsed or washed in a barber shop. All wet and used towels must be removed from the work stand or lavatory after serving each patron.

(15) Haircloths.—Whenever a haircloth is used in cutting the hair, shampooing, etc., a newly laundered towel or paper neck strap shall be placed around the neck so as to prevent the haircloth from touching the skin. Haircloths shall be discarded when soiled.

(16) Baths and Toilets.—Baths and toilets must be kept in a clean and sanitary manner at all times.

(17) Barber Hands.—Every person serving as a barber shall thoroughly cleanse his or her hands immediately before serving each customer.

(18) Barber Appearance.—Each person working as a barber shall be clean, both as to person and dress.

(19) Health Certificate.—No person having an infectious or communicable

disease shall practice as a barber in the State of North Carolina. Each and every barber practicing the profession in North Carolina shall furnish the State Board of Barber Examiners a satisfactory health certificate, including Wassermann Test, at such times as the Board of Barber Examiners may deem necessary, signed by a physician in good standing and licensed by the North Carolina Board of Medical Examiners.

(20) Diseases.—No barber shall serve any person having an infectious or communicable disease, and no barber shall undertake to treat any infectious or contagious disease.

(21) Rules Posted. — The owner or manager of any barber shop, or any other place where barber service is rendered, shall post a copy of these rules and regulations in a conspicuous place in said shop.

(b) Any member of the Board and its agents and assistants shall have authority to enter upon and inspect any barber shop or barber school, or other place where barber service is rendered, at any time during business hours in performance of the duties conferred and imposed by this chapter. A copy of the sanitary rules and regulations set out in this section shall be furnished by the Board to the owner or manager of each barber shop or barber school, or any other place where barber service is rendered in the State, and such copy shall be posted in a conspicuous place in each barber shop or barber school. The Board shall have the right to make additional rules and regulations governing barbers and barber shops for the proper administration and enforcement of this section, provided that no such additional rules and regulations shall be in effect until such rules and regulations shall have been furnished to each barber shop within the State. (1929, c. 119, s. 16; 1931, c. 32; 1933, c. 95, s. 2; 1941, c. 375, s. 7; 1961, c. 577, s. 3.)

Editor's Note.—

The 1961 amendment added at the end of the first sentence in subsection (a) (10) the words "or any other product or solution that the Board may approve." It also added the last sentence of subsection (b).

§ **86-20. Disqualifications for certificate.** — The Board may either refuse to issue or renew, or may suspend or revoke, any certificate of registration, or barber shop permit, or barber school permit for any one or combination of the following causes:

(1) Conviction of a felony shown by certified copy of the record of the court of conviction.

(2) Gross malpractice or gross incompetency.

(3) Continued practice by a person knowingly having an infectious or contagious disease.

(4) Advertising by means of knowingly false or deceptive statements.

(5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.

(6) The commission of any of the offenses described in § 86-22, subdivisions three, four and six.

(7) The violation of any one or a combination of the sanitary rules and regulations.

(8) The violation of any of the provisions of §§ 86-4 and 86-15.

(9) The violation of the provisions of G. S. 86-25 or the rules and regulations pertaining to barber schools as provided for in G. S. 86-25.

(1929, c. 119, s. 19; 1941, c. 375, s. 8; 1945, c. 830, s. 6; 1961, c. 577, s. 4.)

Editor's Note.—

The 1961 amendment added subdivision (9).

§ **86-25. Licensing and regulating barber schools and colleges.**—The North Carolina State Board of Barber Examiners shall have the right to approve barber schools or colleges in the State, and to prescribe rules and regulations for

their operation. However, no barber school or college shall be approved by the Board unless it meets all of the following provisions:

(1) Provide a course of instruction of at least eight (8) months for each student, said course of instruction and training may be completed within a period of one thousand, five hundred and twenty-eight (1,528) hours. Attendance on each working day to consist of not less than eight (8) hours a day for five (5) days a week and four (4) hours a day one day a week.

(2) Each instructor or teacher in any barber school or college must be the holder of an up-to-date certificate of registration as a registered barber in the State of North Carolina, and before being permitted to instruct or teach, shall pass an examination prescribed by the Board to determine his or her qualifications to instruct or teach. Such examination shall be based, among other things, on the provisions of subdivision (3) of this section. Any person desiring to take an instructor's examination must make application to the Board for examination to take instructor's examination on forms to be furnished by the Board and pay the instructor's examination fee and the instructor's examination fee shall be twenty-five dollars ($25.00) and each person who passes the instructor's examination shall be issued a certificate of registration as a registered instructor by paying the issuance fee of ten dollars ($10.00), and said instructor's certificate shall be renewed as of the thirtieth day of June of each and every year. All persons who have heretofore passed the instructor's examination in this State shall be issued an instructor's certificate of registration without examination by paying the required issuance fee provided they make application and pay the required fee on or before September 30, 1961. Any person whose instructors' certificate has expired for a period of three years or more shall be required to take and pass the instructor's examination before such certificate can be renewed.

(3) Each student enrolled shall be given a complete course of instruction on the following subjects: Haircutting; shaving; shampooing, and the application of creams and lotions; care and preparation of tools and implements; scientific massaging and manipulating of muscles of the scalp, face, and neck; sanitation and hygiene; shedding and regrowth of hair; elementary chemistry relating to sterilization and antiseptics; instruction in common skin and scalp diseases to the extent that they may be recognized; pharmacology as it relates to preparations commonly used in barber shops; instruction in the use of ultra-violet, infra-red lamps and other electrical appliances and the effects of the use of each on the human skin; structure of the skin and hair; structure of the head and cranium; muscles of the head, neck and face; glands of the skin and their various functions; cells, digestion; blood circulation; nerve points of the face.

(4) An application for student's permit and doctor's certification must be filed with the State Board of Barber Examiners for each student before entering school or college. Such application to be worded as prescribed by the State Board of Barber Examiners. No student shall be entitled to enroll without student's permit.

(5) A monthly report of each student enrolled shall be furnished the State Board of Barber Examiners on the first of each month. This report to be prescribed by the State Board of Barber Examiners.

(6) All services rendered in schools or colleges on patrons must be done by students only. Instructors may be allowed to teach and aid the students in performing the various barber services, but they shall not be permitted to finish up the patrons after the student has completed work.

(7) Each barber school shall have a manager who will be responsible for the overall operation of the said school. The manager must have passed an instructor's examination conducted by the Board as provided by this section and had at least two or more years of experience as an instructor in an approved barber school.

(8) A sign must be displayed on front of the place of business designating that it is a school or college.

(9) The Board of Barber Examiners shall have the right to withdraw the approval of any barber school or college for the violation of any of the provisions of this law, or any of the rules and regulations prescribed by the Board, subject to the provisions of G. S. 86-21 and chapter 150 of the General Statutes. (1945, c. 830, s. 8; 1961, c. 577, s. 5.)

Editor's Note. — The 1961 amendment rewrote subdivision (1), added the part of subdivision (2) beginning with the third sentence, rewrote subdivision (7) and added the latter part of subdivision (9).

Chapter 87.

Contractors.

Article 2.

Plumbing and Heating Contractors.

Sec.

87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer.

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Article 1.

General Contractors.

§ 87-7. Records of Board; disposition of funds.—The secretary-treasurer shall keep a record of the proceedings of the said Board and shall receive and account for all moneys derived from the operation of this article. Any funds remaining in the hands of the secretary-treasurer to the credit of the Board after the expenses of the Board for the current year have been paid shall be paid over to the Greater University of North Carolina for the use of the School of Engi-

neering through the North Carolina Engineering Foundation. The Board has the right, however, to retain at least ten per cent of the total expense it incurs for a year's operation to meet any emergency that may arise. As an expense of the Board, said Board is authorized to expend such funds as it deems necessary to provide retirement and disability compensation for its employees. (1925, c. 318, s. 7; 1953, c. 805, s. 1; 1959, c. 1184.)

Editor's Note.—
The 1959 amendment added the last sentence.

Article 2.

Plumbing and Heating Contractors.

§ 87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer. — The Board shall charge an examination fee of ten dollars ($10.00) for each regular examination provided, and such funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. Such examination fee shall be retained by the Board irrespective of whether or not the applicant is granted a license. (1959, c. 865, s. 2.)

§ 87-27. License fees payable in advance; application of. — All license fees shall be paid in advance to the secretary and treasurer of the Board and by him held as a fund for the use of the Board. The compensation and expenses of the members of the Board as herein provided, the salaries of its employees, and all expenses incurred in the discharge of its duties under this article shall be paid out of such fund, upon the warrant of the chairman and secretary and treasurer. (1931, c. 52, s. 13; 1933, c. 57; 1939, c. 224, s. 9; 1953, c. 254, s. 3; 1959, c. 865, s. 1.)

Editor's Note.—
The 1959 amendment deleted the former proviso relating to the payment of a portion of the surplus to the State Treasurer.

Article 4.

Electrical Contractors.

§ 87-43. Persons required to obtain licenses; examination required; licenses for firms or corporations. — No person, firm or corporation shall engage in the business of installing, maintaining, altering or repairing within the State of North Carolina any electric wiring, devices, appliances or equipment unless such person, firm or corporation shall have received from the Board of Examiners of Electrical Contractors an electrical contractor's license: Provided, however, that the provisions of this article shall not apply

(1) To the installation, construction, or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter;
(2) To the installation, construction, maintenance, or repair of telephone, telegraph, or signal systems, by public utilities;
(3) To any mechanic employed by a licensee of this Board;
(4) To the installation, construction or maintenance of electrical equipment and wiring for temporary use by contractors in connection with the work of construction;
(5) To the installation, construction, maintenance or repair of electrical wiring, devices, appliances or equipment by persons, firms or corporations, upon their own property, who regularly employ one or more electricians or mechanics for the purpose of installing, maintaining or repairing of electrical wiring, devices or equipment used for the conducting of the business of said persons, firms or corporations;
(6) To the installation, construction, maintenance or repair of electrical

wiring, devices, appliances or equipment by State institutions and private educational institutions which maintain a private electrical department;

(7) To the replacement of lamps and fuses and to the installation and servicing of appliances and equipment connected by means of attachment plug-in devices to suitable receptacles which have been permanently installed.

No license shall be issued by said Board without an examination of the applicant for the purpose of ascertaining his qualifications for such work, but no such examination shall be required for the annual renewal of such license: Provided, however, that persons, firms or corporations residing in the State of North Carolina on March 1, 1937, who have paid the license fees required of electrical contractors by the State Revenue Act of one thousand nine hundred and thirty-five, upon proper certification or establishment of such fact, shall be granted a license by the Board of Examiners under this article without examination; provided, further, any person who upon June 22, 1961, has attained the age of at least 40 and who has continuously engaged in the performance of electrical work under the direction and supervision of a licensee under this article who is the parent of such person and who has been serving continuously since January 1, 1939, as a mechanic employed by a licensee of said Board, as described in subdivision (3), of the first paragraph of this section upon proper certification by the employer licensee or other establishment of such fact, shall be granted a license by said Board under this article without examination. Individuals, firms or corporations shall be eligible to secure licenses from the Board of Examiners: Provided they have regularly on active duty in their respective principal places of business at least one person duly qualified as an electrical contractor under the provisions of this article; and provided further that they have regularly on active duty in each branch place of business operated by them at least one person, who has passed the examination required by this article for electrical contractors, whose duty it shall be to direct and supervise any and all electrical wiring or electrical installations done or made by such branch place or places of business. No license or renewal of any license shall be issued to applicant until the fees herein prescribed shall have been paid. (1937, c. 87, s. 5; 1951, c. 650, ss. 1-2½; 1953, c. 595; 1961, c. 1165.)

Editor's Note.—

The 1961 amendment inserted the second proviso in the last paragraph of this section.

Article 5.

Refrigeration Contractors.

§ 87-52. Board of Examiners; appointment; term of office. — For the purpose of carrying out the provisions of this article there is hereby created a State Board of Refrigeration Examiners consisting of seven members to be appointed by the Governor within sixty days after January 1, 1956. The Board shall consist of an employee of the State Board of Health, one member from the Engineering School of the Greater University of North Carolina, two members who are licensed refrigeration contractors, one member from the Division of Public Health of the Greater University of North Carolina, one member who is a manufacturer of refrigeration equipment and one member who is a wholesaler of refrigeration equipment. The term of office of said members shall be further designated by the Governor so that the term of one member shall expire each year. Thereafter in each year the Governor shall in like manner appoint one person to fill the vacancy on the Board thus created. Vacancies in the membership of the Board shall be filled by appointment of the Governor for the unexpired term. Whenever the word "Board" is used in this article it shall be deemed

and held to refer to the State Board of Refrigeration Examiners. (1955, c. 912, s. 1; 1959, c. 1206, s. 2.)

Editor's Note.—The 1959 amendment struck out the words "one member from" in line five and inserted in lieu thereof the words "an employee of."

For comment on this article, see 33 N. C. Law Rev. 520.

§ 87-58. Definitions; contractors licensed by Board; towns excepted; examinations.

(f) Licenses Granted Without Examination.—Persons who had an established place of business prior to January 1, 1956, and persons who have an established place of business in cities or towns which attain a population of more than 10,000, as indicated by the last official United States census, and who produce satisfactory evidence that they are engaged in the refrigeration business as herein defined, and who have paid the required State revenue tax for the census year in which the municipality attained a population of more than 10,000, shall be granted a certificate of license, without examination, upon application to the Board and payment of the license fee.

(1959, c. 1206, s. 1.)

Editor's Note.—The 1959 amendment rewrote subsection (f). As the rest of the section was not affected by the amendment it is not set out.

ARTICLE 6.

Water Well Contractors.

§ 87-65. Short title.—This article shall be known and may be cited as the "Water Well Contractor's License Act." (1961, c. 997, s. 1.)

Editor's Note.—The act adding this article is effective as of Jan. 1, 1962.

§ 87-66. Definitions.—As used in this article, unless the context otherwise requires:

(1) "Board" means the Board of Water Well Contractor Examiners created by this article.

(2) "Drill" and "drilling" mean all acts necessary to the construction of a water well with power equipment including the sealing of unused water well holes.

(3) "Ground water" means water of underground streams, channels, artesian basins, reservoirs, lakes and other water under the surface of the ground whether percolating or otherwise.

(4) "License" means a water well contractor's license required by this article.

(5) "Person" includes any natural person, partnership, association, trust and public or private corporation.

(6) "Rig permit" and "permit" mean a permit to operate a water well drilling rig required by this article.

(7) "Water well" and "well" mean any excavation that is machine drilled, cored, bored, washed, driven, jetted when the intended use of such excavation is for the location, diversion, artificial recharge or acquisition of ground water, but such term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals or products of mining or quarrying or for inserting media to repressure oil or natural gas bearing formation or for storing petroleum, natural gas or other products.

(8) "Water well contractor" and "contractor" mean any person who contracts to machine drill, alter or repair any water well.

(9) "Water well drilling rig" means the power machinery used in drilling a water well. (1961, c. 997, s. 2.)

§ 87-67. Individuals excepted from article.—This article shall not apply:

(1) To an individual who drills a water well on land which is owned or leased by him and is used by him for farming purposes or as his place of abode; or

(2) To an individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor.

(3) To an individual who hand digs, bores, washes, drives, jets, cores or repairs or cleans wells without the use of power equipment. (1961, c. 997, s. 3.)

§ 87-68. License required for contractors.—Subject to the provisions of § 87-67, after January 1, 1962, no contractor shall drill a water well or engage in the occupation of a water well contractor unless he holds a valid license as a water well contractor issued by the Board under this article. Nothing contained herein shall prevent or preclude any person not licensed under this article or his employee from installing or servicing water well pumps, water pumps, water well pumping units, pumping units, pressure tanks and connections thereto after any water well has been drilled. (1961, c. 997, s. 4.)

§ 87-69. Permit required to operate well drilling rig.—After January 1, 1962, no water well contractor shall operate a water well drilling rig or permit a well drilling rig owned by him to be operated by any employee unless he holds a valid permit to operate such drilling rig issued by the Board under this article. A separate rate permit shall be obtained for each water well drilling rig operated by a licensed water well contractor during the permit year. (1961, c. 997, s. 5.)

§ 87-70. Board of Water Well Contractor Examiners; creation; composition; appointment and terms of members; vacancies.—There is hereby created a State Board of Water Well Contractor Examiners consisting of seven persons to be appointed by the Governor. Four of the members of said Board are to be water well contractors; one is to be an employee of the State Department of Water Resources; one is to be an employee of the State Board of Health; and, one is to be a person to represent the interests of the public at large, and such appointee shall not be a water well contractor or an employee thereof or a member or employee of any State Department. Prior to January 1, 1962, the Governor shall appoint two water well contractors for a term of one year; an employee of the State Board of Health and a person representing the public at large for a term of two years; and, two water well contractors and an employee of the State Department of Water Resources for a term of three years. Thereafter, as the term of an appointed member expires, or as a vacancy in the appointed membership occurs for any reason, the Governor shall appoint a successor for a term of three years, or for the remainder of the unexpired term, as the case may be.

The water well contractors appointed by the Governor must be licensed under the provisions of this article; provided, however, that this requirement shall not apply to members of the original board during their initial terms of office. (1961, c. 997, s. 6.)

§ 87-71. Compensation and expenses of Board members; employment and compensation of personnel; expenses of administration not to exceed income; no liability of State.—Members of the Board shall receive ten dollars ($10.00) per day for each day actually spent in the performance of duties required by this article, plus actual travel expense. The Board may employ necessary personnel for the performance of its functions, and fix the compensation therefor, within the limits of funds available to the Board. The

total expense of the administration of this article shall not exceed the total income therefrom; and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina. (1961, c. 997, s. 7.)

§ 87-72. **Organization and meetings of Board; quorum; rules and regulations; seal; administration of oaths; membership by public employees.**—The Board shall annually elect a chairman from among its membership. The Board shall meet annually in the city of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. Four members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purposes, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board. The Board shall have an official seal and each member shall be empowered to administer oaths in the taking of testimony upon any matters pertaining to the functions of the Board. Membership on the Board of any public employee shall not constitute dual office holding but merely additional duties of such employee. (1961, c. 997, s. 8.)

§ 87-73. **Reports by Board.**—The Board shall file such reports as are required by chapter 93B of the General Statutes of North Carolina. (1961, c. 997, s. 9.)

§ 87-74. **Issuance of licenses and rig permits; qualifications of applicants; examinations; failure to pass examination.** — (a) The Board shall issue a certificate as a licensed water well contractor to any applicant who pays a fee set by the Board but not to exceed the amount specified in this article, who passes an examination to the satisfaction of the Board, and who submits evidence verified by oath and satisfactory to the Board that he:

(1) Is at least twenty-one years of age;
(2) Is of good moral character;
(3) Is a citizen of the United States, or has legally declared his intentions of becoming one; and,

(b) The examination required by subsection (a) of this section shall be in such manner or form as the Board in the exercise of its discretion may determine, and such examination may be either oral or written. The examination for unlicensed applicants shall be held annually, or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. Persons failing to pass the examination shall be refunded one-half of the examination fee. Failure to pass an examination shall not prohibit such person from being examined at a subsequent time.

(c) The Board is to issue rig permits where the applicant therefor has a valid license issued pursuant to this article, has made a proper application, and has paid the required fee. (1961, c. 997, s. 10.)

§ 87-75. **Licensing of contractor working on January 1, 1962.** — Any person who, within six months after January 1, 1962, submits to the Board under oath evidence satisfactory to the Board that he was performing functions as a water well contractor (as defined in § 87-66) on January 1, 1962 shall be licensed as a water well contractor upon the payment of the fee required by this article. (1961, c. 997, s. 11.)

§ 87-76. **Expiration of licenses and permits; renewal without examination.**—All licenses and permits issued under this article shall expire on

the last day of January next following the date of issuance. A license may be renewed for an ensuing license year without examination by making application therefor and paying the prescribed fee at least thirty (30) days prior to the expiration date of the current license, and such application shall extend the period of validity of the current license until a new license is received or the Board refuses to issue a new license under the provisions of this article. (1961, c. 997, s. 12.)

Local Modification.—Alamance: 1963, c. 545, s. 3; Catawba: 1963, c. 557, s. 2; Cumberland: 1963, c. 682, s. 2; Davidson: 1963, c. 741, s. 2; Halifax: 1963, c. 906, s. 2; Orange: 1963, c. 545, s. 3.

§ **87-77. Fees.**—A fee to be determined by the Board, but not to exceed the amount specified herein, shall be paid to the Board at the time an application is made:

For original license	$50.00
For renewal of license	25.00
For each rig permit	15.00

There shall be no reduction in such fees because a license or rig permit when issued may be valid for less time than a full license or permit year. (1961, c. 997, s. 13.)

§ **87-78. Display of license and permit; permit to be weatherproof.**—The licensee shall conspicuously display his license at his principal place of business. Each rig permit shall be made of weatherproof material and shall be firmly attached to the drilling rig for which it was issued. (1961, c. 997, s. 14.)

§ **87-79. Grounds for refusal, suspension or revocation of license.**—The Board may refuse to issue or renew or may suspend or revoke a license on any one or more of the following grounds:

(1) Material misstatement in the application for license;
(2) Failure to have or retain the qualifications required by § 87-74;
(3) Willful disregard or violation of this article or of any rule or regulation promulgated by the Board pursuant thereto; or of any law of the State of North Carolina relating to water wells;
(4) Willfully aiding or abetting another in the violation of this article or any rule or regulation promulgated by the Board pursuant thereto;
(5) Incompetence in the performance of the work of a water well contractor;
(6) Allowing the use of his license by an unlicensed person;
(7) Conviction of any crime an essential element of which is misstatement, fraud or dishonesty or conviction of any felony; and,
(8) Making substantial misrepresentations or false promises of a character likely to influence, persuade or induce in connection with the occupation of a water well contractor. (1961, c. 997, s. 15.)

§ **87-80. Procedure when Board refuses to examine applicant or revokes or suspends certificate.**—The procedure to be followed by the Board when it contemplates refusing to allow an applicant to take an examination, or to revoke or suspend a certificate issued under the provisions of this article, shall be in accordance with the provisions of chapter 150 of the General Statutes of North Carolina. (1961, c. 997, s. 16.)

§ **87-81. Violation a misdemeanor; injunction to prevent violation.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor and punishable in the discretion of the court. The Board is authorized to apply to any judge of the superior court for an injunction in order to prevent any violation or threatened violation of the provisions of this article. (1961, c. 997, s. 17.)

§ 87-82. Counties to which article not applicable; residents can practice in other counties.—This article shall not apply to the following counties: Alexander, Anson, Ashe, Avery, Beaufort, Bladen, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Harnett, Haywood, Henderson, Hoke, Hyde, Iredell, Johnston, Jones, Lincoln, Macon, Madison, Martin, McDowell, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Tyrrell, Washington, Watauga, Wayne, Wilson and Yancey.

The exclusion of the foregoing counties in the operation of this article applies to the operation of residents of the foregoing counties in every county of this State to the end that they can practice their profession notwithstanding a local resident may be required to have a license. (1961, c. 997, ss. 18½, 18¾; c. 1221; 1963, cc. 179, 250, 272, 461; c. 545, ss. 1, 2; c. 557, s. 1; c. 597; c. 682, s. 1; c. 741, s. 1; c. 879; c. 906, s. 1.)

Local Modification.—Catawba: 1963, c. 557, s. 1½.

Editor's Note.—Session Laws 1961, c. 1221 added Martin County.

The first 1963 amendment inserted Avery County in the list of counties to which the section is not applicable. The second 1963 amendment deleted Nash County, the third 1963 amendment added Buncombe County, the fourth 1963 amendment deleted Wake County, the fifth 1963 amendment deleted Alamance and Orange counties, the sixth 1963 amendment deleted Catawba County, the seventh 1963 amendment deleted Jackson County, and the eighth 1963 amendment deleted Cumberland County, the ninth 1963 amendment, effective Jan. 1, 1964, deleted Davidson County, the tenth 1963 amendment deleted the counties of Lee, Stokes and Union and the eleventh 1963 amendment, effective Jan. 1, 1964, deleted Halifax County.

Chapter 88.

Cosmetic Art.

Sec.
88-30. Registered manicurist.

§ 88-7. Itinerant cosmetologist; application of chapter.

Cross Reference.—As to other persons exempt from this chapter, see § 88-22.

§ 88-8. Manicurist.—"Manicurist" means any person who does manicuring or pedicuring and who makes a charge for such service. (1933, c. 179, s. 8; 1963, c. 1257, s. 1.)

Editor's Note. — The 1963 amendment, effective June 30, 1963, rewrote this section.

§ 88-10. Qualifications for certificate of registration. — No person shall be issued a certificate of registration as a registered apprentice by the State Board of Cosmetic Art Examiners, hereinafter established—

(1) Unless such person is at least sixteen years of age.
(2) Unless such person passes a satisfactory physical examination prescribed by the said Board of Cosmetic Art Examiners.
(3) Unless such person has completed at least twelve hundred hours in classes in a reliable cosmetic art school, or college approved by said Board of Cosmetic Art Examiners.
(4) Unless such person passes the examination prescribed by the Board of Cosmetic Art Examiners and pays the required fees hereinafter enumerated.

(5) Unless such person is admitted as an apprentice under the reciprocity section of this chapter. (1933, c. 179, s. 10; 1941, c. 234, s. 1; 1953, c. 1304, ss. 1, 2; 1963, c. 1257, s. 2.)

Editor's Note.—

The 1963 amendment, effective June 30, 1963, substituted "twelve hundred" for "one thousand" in subdivision (3).

Section 5 of c. 1257, Session Laws 1963, provides that the provisions of chapter 88 of the General Statutes relating to apprentices and the minimum 1,000 hour curriculum shall continue in force until June 30, 1965, with respect to persons who are apprentices on June 30, 1963, and persons who have begun study or training in a cosmetic art school by June 30, 1963, but that no credit shall be allowed after June 30, 1965, for any cosmetic art school study and training which occurred prior to July 1, 1963.

§ 88-19. Admitting operators from other states. — Any person who has been licensed to practice cosmetic art in another state, either as an apprentice or registered cosmetologist by the examining board of such other state by whatever name called, shall be admitted to practice cosmetic art in North Carolina under the same reciprocity or comity provisions which the state of his or her registration or licensing grants to cosmetologists licensed under the laws of this State. All applicants from states which have no examining, licensing or registering board or agency for cosmetologists and all applicants from states which do not grant reciprocity or comity to cosmetologists licensed under the laws of this State, before being issued a certificate of registration to practice cosmetic art in this State, must have completed at least twelve hundred (1200) hours in classes in a reliable college approved by the Board of Cosmetic Art Examiners and shall be required to take and pass an examination as provided in subdivision (5) of G. S. 88-20 and pay a fee of fifteen dollars ($15.00) in addition to the regular license fee of five dollars ($5.00). (1933, c. 179, s. 19; 1953, c. 1304, s. 4; 1957, c. 1184, s. 3; 1963, c. 1257, s. 3.)

Editor's Note.—

The 1963 amendment, effective June 30, 1963, substituted "twelve hundred (1200)" for "one thousand (1000)" in the last sentence.

Section 5 of c. 1257, Session Laws 1963, provides that the provisions of chapter 88 of the General Statutes relating to apprentices and the minimum 1,000 hour curriculum shall continue in force until June 30, 1965, with respect to persons who are apprentices on June 30, 1963, and persons who have begun study or training in a cosmetic art school by June 30, 1963, but that no credit shall be allowed after June 30, 1965, for any cosmetic art school study and training which occurred prior to July 1, 1963.

§ 88-22. Persons exempt.

Cross Reference.—As to other persons exempt from this chapter, see § 88-7.

§ 88-30. Registered manicurist.—A person may be licensed to engage in the practice of manicuring or pedicuring in a cosmetic art shop, beauty parlor or hairdressing establishment without being a registered cosmetologist. A certificate of registration as a registered manicurist shall be issued by the Board of Cosmetic Art Examiners to any person who meets the following qualifications:

(1) Who has completed 150 hours in classes in a cosmetic art school or college approved by the Board;

(2) Who is at least 17 years of age;

(3) Who passes a satisfactory physical examination as prescribed by said Board; and

(4) Who has passed a satisfactory examination, conducted by the Board, to determine his or her fitness to practice manicuring, such examination to be so prepared and conducted as to determine whether or not the applicant is possessed of the requisite skill in such trade to prop-

erly perform all the duties thereof and services incident thereto. (1963, c. 1257, s. 4.)

Editor's Note.—The act inserting this section became effective June 30, 1963.

Chapter 89.

Engineering and Land Surveying.

§ 89-4. State Board of Registration created; powers; duties; qualifications and compensation; instructional programs.—To carry out the provisions of this chapter, the State Board of Registration for Professional Engineers and Land Surveyors is hereby created, whose duty it shall be to administer the provisions of this chapter. The Board shall consist of four registered engineers and one registered land surveyor, appointed by the Governor. Each member of the Board shall be a citizen of the United States, a resident of this State, and shall have been a practicing registered engineer, or registered land surveyor, in North Carolina for at least ten years. Each member of the Board shall receive ten dollars ($10.00) per diem for attending the sessions of the Board or of its committees, and for time spent in necessary travel, and in addition shall be reimbursed for all necessary travel, and incidental and clerical expense incurred, in carrying out the provisions of this chapter. When the terms of office of the present members of the Board expire on 31 December 1957, one member shall be appointed for a term of one year, one member shall be appointed for a term of two years, one member shall be appointed for a term of three years, one member shall be appointed for a term of four years, and one member for a term of five years. Thereafter, as their terms of office expire their successors shall be appointed for terms of five years and shall serve until their successors are appointed and qualified. Each member shall continue in office after the expiration of his term until his successor shall be duly appointed and qualified. The Governor may remove any member of the Board for misconduct, incompetency, neglect of duty or for any other sufficient cause. Vacancies in the membership of the Board, however created, shall be filled by appointment by the Governor for the unexpired term. Each member of the Board shall receive a certificate of appointment from the Governor, and before beginning his term of office he shall file with the Secretary of State the constitutional oath of office. Notwithstanding anything herein contained, the present members of the Board shall continue in office as members of said Board until their present respective terms expire.

The Board shall have power to compel the attendance of witnesses, may administer oaths and may take testimony and proofs concerning all matters within its jurisdiction. The Board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted; and shall make all bylaws and rules, not inconsistent with law, needed in performing its duty.

The Board shall hold at least two regular meetings each year. Special meetings shall be held at such times as the bylaws of the Board may provide. Notice of all meetings shall be given in such manner as the bylaws may provide. The Board shall elect annually from its members a chairman, a vice-chairman, and a secretary. The secretary shall receive compensation at a rate to be determined by the Board. A quorum of the Board shall consist of not less than three members. The Board is authorized and empowered to use its funds to establish and

conduct instructional programs for persons who are currently registered to practice engineering or land surveying, as well as for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to practice engineering or land surveying. The Board may expend its funds for these purposes and is authorized and empowered not only to conduct, sponsor and arrange for instructional programs, but also to carry out such programs through extension courses or other media, and the Board may enter into plans or agreements with community colleges, institutions of higher learning, both public and private, State and county boards of education or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging such courses, instruction, extension courses or in assisting in obtaining courses of study or programs in the fields of engineering and land surveying. For the purpose of carrying out these objectives, the Board is authorized to make and promulgate such rules and regulations as may be necessary for such educational programs, instruction, extension services or for entering into plans or contracts with persons or educational and industrial institutions, but may not require attendance of surveyors at any such programs or make any penalty for failure to attend. Provided that this paragraph shall not apply to Warren County. (1921, c. 1, ss. 3 to 6; C. S., ss. 6055(d) to 6055(g); 1951, c. 1084, s. 1; 1957, c. 1060, s. 1; 1963, c. 843.)

Editor's Note.—
The 1963 amendment added the fourth paragraph.

§ **89-5. Secretary, duties and liabilities; expenditures.** — The secretary of the Board shall receive and account for all moneys derived from the operation of this chapter, and shall deposit them in a special fund in some bank or trust company authorized to do business in North Carolina, which fund shall be designated as the "Fund of the Board of Registration for Professional Engineers and Land Surveyors," which fund shall be drawn against only for the purposes of this chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of said fund on the warrant signed by the chairman and secretary of the Board: Provided, however, that at no time shall the total of warrants issued exceed the total amount of funds accumulated under this chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Registration for Professional Engineers and Land Surveyors, conditioned upon the faithful performance of his duties. The premium on said bond shall be regarded as a proper and necessary expense of the Board. (1921, c. 1, s. 7; C. S., s. 6055(h); 1951, c. 1084, s. 1; 1959, c. 617.)

Editor's Note.—The 1959 amendment, effective from and after November 30, 1959, rewrote this section.

§ **89-14. Land surveyors.**—At any time prior to July 1, 1960, upon new application therefor and the payment of a registration fee of ten dollars ($10.00), the Board shall issue a certificate of registration without oral or written examination, when such applicant shall submit evidence under oath, satisfactory to the Board, that he is of good moral character, and has practiced land surveying in North Carolina for at least one year. Any applicant hereunder may request and be given an oral or written examination. (1921, c. 1, s. 15; C. S., s. 6055(q); 1951, c. 1084, s. 1; 1959, c. 1236, s. 1.)

Local Modification.—Ashe: 1963, cc. 327, 1239.

Editor's Note.—The 1959 amendment rewrote this section.

§ **89-15. Existing registration not affected.** — Nothing in this chapter shall be construed as affecting the status of registration of any engineer or land surveyor who is rightfully in possession of a certificate of registration duly is-

sued by the Board and prior to July 1, 1959. (1951, c. 1084, s. 1; 1959, c. 1236, s. 2.)

Editor's Note.—The 1959 amendment substituted "July 1, 1959" for "April 14, 1951", and deleted the former second paragraph.

§ 89-16. **Manual of practice for land surveyors.** — Prior to July 1, 1960 the State Board of Registration for Engineers and Land Surveyors, provided for in chapter 89 of the General Statutes of North Carolina, are authorized and directed to prepare or have prepared and approved a manual of practice for the information and guidance of those engaged in the practice of land surveying in North Carolina and shall review said manual annually, and shall revise same if revisions are deemed advisable or necessary by the Board. The expenses incurred in the preparation and necessary for the distribution of said manual are to be paid from the fund of the Board of Registration for Engineers and Land Surveyors in accordance with the provisions of G. S. 89-7. (1953, c. 1215; 1959, c. 1236, s. 3.)

Editor's Note.—The 1959 amendment inserted at the beginning of the first sentence the words "Prior to July 1, 1960." It also added at the end of the sentence the following: "and shall review said manual annually, and shall revise same if revisions are deemed advisable or necessary by the Board."

Chapter 90.

Medicine and Allied Occupations.

Article 2.

Dentistry.

§ 90-22. Practice of dentistry regulated in public interest; article liberally construed; Board of Dental Examiners; composition; qualifications and terms of members; vacancies; nominations and elections; compensation; expenditures by Board.—(a) The practice of dentistry in the State of North Carolina is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of North Carolina. This article shall be liberally construed to carry out these objects and purposes.

(b) The North Carolina State Board of Dental Examiners heretofore created by chapter one hundred and thirty-nine, Public Laws, one thousand eight hundred and seventy-nine and by chapter one hundred and seventy-eight, Public Laws one thousand nine hundred and fifteen, is hereby continued as the agency of the State for the regulation of the practice of dentistry in this State. Said Board of Dental Examiners shall consist of six dentists who are licensed to practice dentistry in North Carolina and who possess other qualifications hereinafter specified and who shall have been elected in an election held as is hereinafter provided in which every person licensed to practice dentistry in North Carolina and residing in North Carolina shall be entitled to vote. Each member of said Board shall be elected for a term of three years and until his successor shall be elected and shall qualify. Each year there shall be elected two members for such terms of three years each. Any vacancy occurring on said Board shall be filled for the period of the unexpired term by a majority vote of the remaining members of the Board. No person shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice dentistry in North Carolina and actually engaged in the practice of dentistry in North Carolina and unless he has had such license to practice dentistry in North Carolina for not less than nine consecutive years prior thereto.

(c) Nominations and elections of members of the North Carolina State Board of Dental Examiners shall be as follows:

(1) An election shall be held each year to elect two members of the Board of Dental Examiners, each to take office on the first day of August following the election and to hold office for a term of three years and until his successor has been elected and shall qualify; provided that if in any year the election of the members of such Board for that year shall not have been completed by August first of that year, then the said members elected that year shall take office immediately after the completion of the election and shall hold office until the first of August of the third year thereafter and until their successors are elected and qualified.

(2) Every dentist with a current North Carolina license residing in North Carolina shall be eligible to vote in all elections. The holding of such

a license to practice dentistry in North Carolina shall constitute registration to vote in such elections. The list of licensed dentists shall constitute the registration list for elections.

(3) All elections shall be conducted by the Board of Dental Examiners which is hereby constituted a Board of Dental Elections. If a member of the Board of Dental Examiners whose position is to be filled at any election is nominated to succeed himself, and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Dental Elections for that election and the remaining members of the Board of Dental Elections shall proceed and function without his participation.

(4) Nomination of candidates for election shall be made to the Board of Dental Elections by a written petition signed by not less than ten dentists licensed to practice in North Carolina and residing in North Carolina, and filed with said Board of Dental Elections subsequent to January first of the year in which the election is to be held and not later than midnight of the 20th day of May of such year, or not later than such earlier date (not before April 1) as may be set by the Board of Dental Elections: Provided, that not less than ten days' notice of such earlier date shall be given to all dentists qualified to sign a petition of nomination.

(5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Dental Elections or its designated secretary at any time prior to the closing of the polls in any election.

(6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Dental Elections shall prescribe, ballots containing, in alphabetical order, the names of all nominees; and each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Dental Elections. At such time as may be fixed by the Board of Dental Elections a ballot and a return official envelope addressed to said Board shall be mailed to each dentist licensed to practice in North Carolina and residing in North Carolina, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

"Serial No. of Envelope .....
Signature of Voter .....
Address of Voter .....
.....

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)."

The Board of Dental Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless, within the time hereinafter provided, it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

(7) The date and hour fixed by the Board of Dental Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.

(8) The said ballots shall be canvassed by the Board of Dental Elections beginning at noon on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed dentists may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of the ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

(9) If more than two nominees receive a majority of the votes cast, the two receiving the highest number of votes shall be declared elected. If only two of the nominees receive a majority of the votes cast, they shall be declared elected. If only one of the nominees shall receive a majority of the votes cast, he shall be declared elected and the Board of Dental Elections shall thereupon order a second election to determine a contest between the two remaining nominees receiving the highest number of votes. If no candidate shall receive a majority of the votes cast, the said Board shall order a second election to determine a contest between the four candidates receiving the highest number of votes. In any election if there is a tie between candidates, the tie shall be resolved by the vote of the Board of Dental Examiners, provided that if a member of that Board is one of the candidates in the tie, he may not participate in such vote.

(10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements: Provided, that if the second election is between four candidates, then the two receiving the highest number of votes shall be declared elected.

(11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations because of lack of plural or proper nominations or death, or withdrawal, or disqualification or any other reason, there shall be (i) only two candidates for two positions, they shall be declared elected by the Board of Dental Elections, or (ii) only one candidate for one position, he shall be declared elected by the Board of Dental Elections, or (iii) no candidate for two positions, the two positions shall be filled by the Board of Dental Exam-

iners, or (iv) no candidate for one position, the position shall be filled by the Board of Dental Examiners, or (v) one candidate for two positions, the one candidate shall be declared elected by the Board of Dental Elections and one qualified dentist shall be elected to the other position by the Board of Dental Examiners. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the Board of Dental Examiners. In the event of the death or resignation of a member of the Board of Dental Examiners, after taking office, his position shall be filled for the unexpired term by the Board of Dental Examiners.

(12) An official list of licensed dentists shall be kept at an office of the Board of Dental Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed dentist. As soon as the voting in any election begins a list of the licensed dentists shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.

(13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Dental Elections for a period of six months following the close of an election.

(14) From any decision of the Board of Dental Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by article 33 of chapter 143 of the General Statutes of North Carolina.

(15) The Board of Dental Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed dentists residing in North Carolina.

(d) For service on the Board of Dental Elections, the members of such Board shall receive the per diem compensation and expenses allowed by this article for service as members of the Board of Dental Examiners. The Board of Dental Elections is authorized and empowered to expend from funds collected under the provisions of this article such sum or sums as it may determine necessary in the performance of its duties as a Board of Dental Elections, said expenditures to be in addition to the authorization contained in G. S. 90-43 and to be disbursed as provided therein.

(e) The Board of Dental Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered dentists, for the issuance and the receipt of envelopes and ballots. (1935, c. 66, s. 1; 1957, c. 592, s. 1; 1961, c. 213, s. 1.)

Editor's Note.—

The 1961 amendment deleted all of the former second paragraph, now subsection (b), appearing after the words "in this State" in line five and added the rest of the section.

Section 2 of the 1961 amendatory act provides that the first election pursuant to the act shall be held in the calendar year 1961. Section 3 of the act confirms the present membership of the Board of Dental Examiners and Board of Dental Elections. And section 4 provides that the act shall be construed as fully as may be possible in conformity with existing laws.

§ 90-26. Annual and special meetings. — The North Carolina State Board of Dental Examiners shall meet annually on the fourth Monday in June

of each year at such place as may be determined by the Board, and at such other times and places as may be determined by action of the Board or by any four (4) members thereof. Notice of the place of the annual meeting and of the time and place of any special or called meeting shall be given in writing, by registered or certified mail or personally, to each member of the Board at least ten (10) days prior to said meeting; provided the requirements of notice may be waived by any member of the Board. At the annual meeting or at any special or called meeting, the said Board shall have the power to conduct examination of applicants and to transact such other business as may come before it, provided that in case of a special meeting, the purpose for which said meeting is called shall be stated in the notice. (1935, c. 66, s. 3; 1961, c. 446, s. 1.)

Editor's Note. — The 1961 amendment, effective July 1, 1961, rewrote the second sentence. Prior to the amendment notice was given by advertising in newspapers.

§ 90-29. Necessity for license; dentistry defined; certain practices exempted.

(5) The practice of dentistry by licensed dentists of another state, territory or country at meetings of organized dental societies, or component parts thereof, meetings of dental colleges or other like dental organizations while appearing as clinicians, or when appearing in emergency cases upon the specific call of dentist duly licensed under the provisions of this article.

(1961, c. 446, s. 2.)

Editor's Note.—

The 1961 admendment, effective July 1, 1961, substituted "organized dental societies" for the "North Carolina Dental Society" in subdivision (5). As only this subdivision was changed the rest of the section is not set out.

§ 90-29.1. Extraoral services performed for dentists. — Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm, or corporation so employed or engaged, when constructing or repairing such dentures, bridges, or replacements, exclusively, directly, and solely on the written work order of a licensed member of the dental profession as hereafter provided, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this article. However, it is unlawful for persons, firms or corporations so employed or engaged, to advertise in any manner the appliances constructed or repaired, or the services rendered in the construction, repair or alteration thereof, except, that persons, firms or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporations so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices therefor. Announcements may also be made by business card, in business and telephone directories and by signs located upon the premises wherein the place of business is situated, but announcements made by business card or in business and telephone directories and signs shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any material or materials used or to be used, or any picture or other reproduction of a human head, mouth, denture or specimen of dental work or any other media calling attention of the public to their business. Announcements in business and telephone directories shall be limited to name and address and telephone number and shall not occupy more than the number of lines necessary to disclose that information. The lettering on signs

shall be no more than seven inches in height and no illuminated or glaring light signs shall be used. (1957, c. 592, s. 3; 1961, c. 446, ss. 3, 4.)

Editor's Note. — The 1961 amendment, effective July 1, 1961, substituted in the second sentence the words "written work" for the words "direction, prescription or" and inserted the next to last sentence.

§ 90-29.2. Requirements in respect to written work orders; penalty. —(a) Any licensed dentist who employs or engages the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, orthodontic appliance, or other replacements, for a part of a tooth, a tooth or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the North Carolina State Board of Dental Examiners which shall contain:

(1) The name and address of the person, firm, or corporation to which the work order is directed.
(2) The patient's name or identification number. If a number is used, the patient's name shall be written upon the duplicate copy of the work order retained by the dentist.
(3) The date on which the work order was written.
(4) A description of the work to be done, including diagrams if necessary.
(5) A specification of the type and quality of materials to be used.
(6) The signature of the dentist and the number of his license to practice dentistry.

(b) The person, firm or corporation receiving a work order from a licensed dentist shall retain the original work order and the dentist shall retain a duplicate copy thereof for inspection at any reasonable time by the North Carolina State Board of Dental Examiners or its duly authorized agents, for a period of two years in both cases.

(c) If the person, firm or corporation receiving a written work order from a licensed dentist engages another person, firm or corporation (hereinafter referred to as "subcontractor") to perform some of the services relative to such work order, he or it shall furnish a written subwork order with respect thereto on forms prescribed by the North Carolina State Board of Dental Examiners which shall contain:

(1) The name and address of the subcontractor.
(2) A number identifying the subwork order with the original work order, which number shall be endorsed on the work order received from the licensed dentist.
(3) The date on which the subwork order was written.
(4) A description of the work to be done by the subcontractor, including diagrams if necessary.
(5) A specification of the type and quality of materials to be used.
(6) The signature of the person, firm or corporation issuing the subwork order.

The subcontractor shall retain the subwork order and the issuer thereof shall retain a duplicate copy, attached to the work order received from the licensed dentist, for inspection by the North Carolina State Board of Dental Examiners or its duly authorized agents, for a period of two years in both cases.

(d) Any licensed dentist who:

(1) Employs or engages the services of any person, firm or corporation to construct or repair extraorally, prosthetic dentures, bridges, or other dental appliances without first providing such person, firm, or corporation with a written work order; or
(2) Fails to retain a duplicate copy of the work order for two years; or
(3) Refuses to allow the North Carolina State Board of Dental Examiners to inspect his files of work orders

is guilty of a misdemeanor and the North Carolina State Board of Dental Examiners may revoke or suspend his license therefor.

(e) Any such person, firm, or corporation, who:

(1) Furnishes such services to any licensed dentist without first obtaining a written work order therefor from such dentist; or

(2) Acting as a subcontractor as described in (c) above, furnishes such services to any person, firm or corporation, without first obtaining a written subwork order from such person, firm or corporation; or

(3) Fails to retain the original work order or subwork order, as the case may be, for two years; or

(4) Refuses to allow the North Carolina State Board of Dental Examiners or its duly authorized agents, to inspect his or its files of work orders or subwork orders

shall be guilty of a misdemeanor. (1961, c. 446, s. 5.)

Editor's Note.—The act adding this section is effective as of July 1, 1961.

§ 90-31. Annual renewal of licenses.—The laws of North Carolina now in force, having provided for the annual renewal of any license issued by the North Carolina State Board of Dental Examiners, it is hereby declared to be the policy of this State, that all licenses heretofore issued by the North Carolina State Board of Dental Examiners or hereafter issued by said Board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina State Board of Dental Examiners is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each dentist engaged in the practice of dentistry in North Carolina shall make application to the North Carolina State Board of Dental Examiners and receive from said Board, subject to the further provisions of this section and of this article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year, the date of the original issuance of license to said applicant and such other information as the said Board from time to time may prescribe, at least six months prior to January first of any year.

If the application for such renewal certificate, accompanied by the fee required by this article, is not received by the Board before January 31 of each year, an additional fee of five dollars ($5.00) shall be charged for renewal certificate. If such application, accompanied by the renewal fee, plus the additional fee, is not received by the Board before March 31 of each year, every person thereafter continuing to practice dentistry without having applied for a certificate of renewal shall be guilty of the unauthorized practice of dentistry and shall be subject to the penalties prescribed by G. S. 90-40. (1935, c. 66, s. 8; 1953, c. 564, s. 5; 1961, c. 446, s. 6.)

Editor's Note.— The 1961 amendment, effective July 1, 1961, substituted "March 31" for "June 30" in line five of the last paragraph.

§ 90-35. Duplicate licenses.—When a person is a holder of a license to practice dentistry in North Carolina or the holder of a certificate of renewal of license, he may make application to the North Carolina State Board of Dental Examiners for the issuance of a copy or a duplicate thereof accompanied by a fee of five dollars. Upon the filing of the application and the payment of the fee, the said Board shall issue a copy or duplicate. (1935, c. 66, s. 8; 1961, c. 446, s. 7.)

Editor's Note. — The 1961 amendment, effective July 1, 1961 substituted "five dollars" for "two dollars" in line five.

§ 90-39. Fees collectible by Board.

(2) Each certificate of renewal of license, a fee of eight dollars ($8.00); (1961, c. 446, s. 8.)

Editor's Note.—

The 1961 amendment, effective July 1, 1961, substituted "eight dollars ($8.00)" for "five dollars ($5.00)" in subdivision (2). As only this subdivision was affected the rest of the section is not set out.

ARTICLE 4.

Pharmacy.

Part 1. Practice of Pharmacy.

§ 90-61. Application and examination for license, prerequisites.

The General Assembly has prescribed the requirements an applicant must meet to become licensed as a registered pharmacist in this section and §§ 90-63 and 90-64. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 90-63. Certain assistant pharmacists may take registered pharmacist's examination; no original assistants' certificates issued after January 1, 1939.

Cross Reference.—See note to § 90-61.

§ 90-64. When license without examination issued.

Cross Reference.—See note to § 90-61.

§ 90-71. Selling drugs without license prohibited; drug trade regulated.

Nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, nor, except in cities and towns wherein there is located an established drugstore, and except in the counties of Bertie, Cabarrus, Cleveland, Cumberland, Duplin, Forsyth, Gaston, Guilford, Halifax, Harnett, Henderson, Iredell, Mecklenburg, Montgomery, Moore, New Hanover, Orange, Pender, Richmond, Robeson, Rockingham, Rowan, Scotland and Wilson, shall this section be construed to interfere with the sale of paregoric, Godfrey's Cordial, aspirin, alum, borax, bicarbonate of soda, calomel tablets, castor oil, compound cathartic pills, copperas, cough remedies which contain no poison or narcotic drugs, cream of tartar, distilled extract witch hazel, epsom salts, harlem oil, gum asafetida, gum camphor, glycerin, peroxide of hydrogen, petroleum jelly, saltpetre, spirit of turpentine, spirit of camphor, sweet oil, and sulphate of quinine, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "Poison," the vignette of the skull and crossbones, and the name of at least two readily obtainable antidotes.

(1959, c. 1222.)

Editor's Note.—

The 1959 amendment deleted "Avery" from the list of counties in the second paragraph. As the rest of the section was not affected by the amendment it is not set out.

This Section and § 90-72 Construed in Pari Materia.—This section and § 90-72, which relate to the same subject matter, are to be construed in pari materia. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Dispensing of Drugs by Unlicensed Person—Drug Prepared by Manufacturer

and Prescribed by Trade Name.—It is immaterial to the application of this section and § 90-72 that the drug is prescribed by the trade name of the manufacturer and that an unlicensed person, in dispensing the drug to a customer on prescription in the absence of a licensed pharmacist or assistant pharmacist, merely takes the designated number of tablets prepared by the manufacturer from a duly labeled stock bottle and places them in a small container and delivers them to the customer. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Same—"As an Aid to and under the Immediate Supervision of" Licensed Person.—This section and § 90-72, construed in pari materia, provide that it shall be unlawful under this section and a misdemeanor under § 90-72 for any person not licensed as a pharmacist or assistant pharmacist to compound, dispense or sell at retail any drug, etc., upon the prescription of a physician or otherwise, "or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist under this article." Although the punctuation is inexact, it is clear that the exception applies to dispensing drugs and selling drugs at retail as well as to compounding physicians' prescriptions. This view is supported by the last sentence of the first paragraph of this section. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

This section and § 90-72 make it unlawful for an unlicensed person either to compound or to dispense or to sell at retail any drug, either upon a physician's prescription or otherwise, unless he acts in the immediate physical presence of a licensed pharmacist or assistant pharmacist and under his personal supervision and direction. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

The fact that an unlicensed person, in the absence of any licensed pharmacist or assistant pharmacist, in dispensing drugs on a prescription to a customer, has access by telephone to licensed pharmacists in other stores owned by the same employer, does not render his dispensing the drugs permissible under this section. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Same—During Temporary Absence of Licensed Pharmacist in Charge.—The proviso to this section "that during the temporary absence of the licensed pharmacist in charge of any pharmacy, drug, or chemical store, a licensed assistant pharmacist may conduct or have charge of said store" cannot be construed to the effect that during the temporary absence of the licensed pharmacist an unlicensed person may conduct or have charge of the store. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

§ 90-72. Compounding prescriptions without license.

Cross Reference.—See note to § 90-71.

Part 2. Dealing in Specific Drugs Regulated.

§ 90-77. Poisons; sales regulated; label; penalties.

Section Is Restricted to Pharmaceutics.—

For comment, see 36 N. C. Law Rev. 361.

§ 90-85.1. Enjoining illegal practices.

Constitutionality. — The validity of this section is not impaired by the fact that the same acts that would constitute wilful violations of the injunction would also constitute a basis for criminal prosecutions. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

Although this section expressly provides that the violation of its provisions shall constitute a misdemeanor and also provides that the acts therein prescribed may be enjoined, the contention that the violation of an injunction issued under the statute would subject the offender to punishment for a criminal offense without the constitutional safeguards of indictment, trial by jury, etc., under N. C. Const., art. 1, §§ 12 and 13, is untenable, since the punishment for violation of the injunction

would be for violating an order of the court and not punishment for a crime. North Carolina Board of Pharmacy v. Lane, 248 N. C. 134, 102 S. E. (2d) 832 (1958).

ARTICLE 5.

Narcotic Drug Act.

§ 90-88. Manufacture, sale, etc., of narcotic drugs regulated.

Cited in State v. Helms, 247 N. C. 740, 102 S. E. (2d) 241 (1958); State v. Thompson, 257 N. C. 452, 126 S. E. (2d) 58 (1962).

§ 90-106. Fraudulent attempts to obtain drugs prohibited.

Means and Manner of Procuring Drug Are Essentials of Crime.—Under this section, it is not a crime either to obtain or to attempt to obtain a narcotic drug; and it is not a crime either to procure or to attempt to procure the administration of a narcotic drug. To do so by the means and in the manner set forth in the section constitutes the criminal offense. Thus, the means and manner are essentials of the crime. State v. Helms, 247 N. C. 740, 102 S. E. (2d) 241 (1958).

Indictment Fatally Defective. — Where an indictment under this section alleges no facts tending to identify any particular transaction or the means and manner employed by the accused except in the "mere general or generic terms" of the section, and there are no factual averments as to the nature of the alleged "fraud, deceit, misrepresentation, or subterfuge," or as to the identity or contents of a prescription or other written order alleged to have been forged or altered, or as to what material fact is alleged to have been concealed, or as to what false name was used or what false address was given, the indictment is fatally defective. State v. Helms, 247 N. C. 740, 102 S. E. (2d) 241 (1958).

§ 90-111. Penalties for violation.

Cited in State v. White, 246 N. C. 587, 99 S. E. (2d) 772 (1957).

ARTICLE 5A.

Barbiturate and Stimulant Drugs.

§ 90-113.1. Definitions.—As used in this article:

(1) The term "barbiturate drug" means:

a. Barbituric acid, the salts and derivatives of barbituric acid, or compounds, preparations or mixtures thereof; and

b. Drugs, compounds, preparations or mixtures which have a hypnotic or somnifacient effect on the body of a human or animal, to be found by the State Board of Pharmacy and duly promulgated by rule or regulation;

except that the term "barbiturate drug" shall not include any drug the manufacture or delivery of which is regulated by the narcotic drug laws of this State: Provided, however, that the term "barbiturate drug" shall not include compounds, mixtures, or preparations containing barbituric acid, salts or derivatives of barbituric acid, when such compounds, mixtures, or preparations contain a sufficient quantity of another drug or drugs, in addition to such acid, salts or derivatives, to cause the resultant product to produce an action other than its hypnotic or somnifacient action.

(2) The term "stimulant drug" means any drug consisting of amphetamine, desoxyephedrine (methamphetamine), mephentermine, pipradol, phenmetrazine, methylphenidate, or any salt, mixture or optical isomer of any of them, which drug, salt, mixture or optical isomer has a stimulating effect on the central nervous system, but shall not include preparations containing any of the aforementioned drugs, salts, mixtures or optical isomers thereof which is compounded, mixed or pre-

pared with another drug so as to cause the resultant product to produce an action other than that of predominantly stimulating the central nervous system.

(3) The term "delivery" means sale, dispensing, giving away, or supplying in any other manner.

(4) The term "patient" means, as the case may be:

a. The individual for whom a barbiturate or stimulant drug is prescribed or to whom a barbiturate or stimulant drug is administered; or

b. The owner or the agent of the owner of the animal for which a barbiturate or stimulant drug is prescribed or to which a barbiturate or stimulant drug is administered,

provided that the prescribing or administering referred to in subdivisions a and b hereof is in good faith and in the course of professional practice only.

(5) The term "person" includes individual, corporation, partnership and association.

(6) The term "practitioner" means a person licensed in this State to prescribe and administer barbiturate or stimulant drugs, as herein defined, in the course of his professional practice; professional practice of a practitioner means treatment of patients under a bona fide practitioner-patient relationship.

(7) The term "pharmacist" means a person duly registered with the State Board of Pharmacy pursuant to chapter 90, article 4 of the General Statutes of North Carolina.

(8) The term "prescription" means a written order issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a barbiturate or stimulant drug for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient or if such barbiturate or stimulant drug is prescribed for an animal, the species of such animal, the barbiturate or stimulant drug and quantity of the barbiturate or stimulant drug prescribed, the directions for use of such barbiturate or stimulant drug, and the signature of such practitioner, or an oral order therefor made by such practitioner and promptly reduced to writing, and filed, by the pharmacist. The written statement of the oral order shall be signed by the pharmacist and shall include the name of the issuing practitioner and all information required in a written order.

(9) The term "manufacturer" means a person who manufactures barbiturate or stimulant drugs, and includes persons who prepare such barbiturate or stimulant drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, but does not include pharmacists so preparing such barbiturate or stimulant drugs solely for dispensing on prescriptions received or to be received by them.

(10) The term "wholesaler" means a person engaged in the business of distributing barbiturate or stimulant drugs to persons included in any of the classes named in subdivisions a to e inclusive of G. S. 90-113.3 (a) (3).

(11) The term "warehouseman" means a person who, in the usual course of business, stores barbiturate or stimulant drugs for others lawfully entitled to possess them and who has no control over the disposition of such barbiturate or stimulant drugs except for the purpose of such storage. (1955, c. 1330, s. 1; 1959, c. 1215, s. 1.)

Editor's Note.—Session Laws 1959, c. 1215, rewriting this article, is effective as of Oct. 1, 1959.

§ 90-113.2. Prohibited acts.—It shall be unlawful:

(1) To deliver any barbiturate or stimulant drugs unless:

a. Such barbiturate or stimulant drug is delivered by a pharmacist in good faith upon prescription and there is affixed to the immediate container in which such barbiturate or stimulant drug is delivered a label bearing

1. The name and address of the establishment from which such barbiturate or stimulant drug was delivered;
2. The date on which the prescription for such barbiturate or stimulant drug was filled;
3. The number of such prescription as filed in the prescription files of the pharmacist who filled such prescription;
4. The name of the practitioner who prescribed such barbiturate or stimulant drug;
5. The name of the patient, and if such barbiturate or stimulant drug was prescribed for an animal, a statement showing the species of the animal; and
6. The direction for use of the barbiturate or stimulant drug and cautionary statements, if any, as contained in the prescription; and

b. In the event that such delivery is pursuant to oral order, such prescription shall be promptly reduced to writing and filed by the pharmacist;

c. Such barbiturate or stimulant drug is delivered by a practitioner in good faith in the course of his professional practice only and upon a prescription written by such practitioner and there is affixed to the immediate container in which such barbiturate or stimulant drug is delivered a label bearing the same information required in subdivision (1) a above for pharmacists. Provided, however, that the practitioner may keep a record of the barbiturate or stimulant drugs dispensed or administered by him in lieu of writing a prescription for same. Such record shall show:

1. The kind and amount of barbiturate or stimulant drug administered or dispensed;
2. The date such barbiturate or stimulant drug was administered or dispensed; and
3. The name and address of the person to whom such barbiturate or stimulant drug was administered or dispensed. Provided, however, that the foregoing requirement for the writing of a prescription or the keeping of a record shall not apply to barbiturate or stimulant drugs delivered by such a practitioner in a quantity necessary for the immediate needs of his patient.

(2) To refill any prescription for a barbiturate or stimulant drug unless such refilling is specifically authorized by the practitioner.

(3) For any person to possess a barbiturate or stimulant drug unless such person obtained such barbiturate or stimulant drug in good faith on the prescription of a practitioner in accordance with subdivision (1) a or in accordance with subdivision (1) c of this section or in good faith from a person licensed by the laws of any other state or the District of Columbia to prescribe or dispense barbiturate or stimulant drugs.

(4) For any person to obtain or attempt to obtain a barbiturate or stimulant drug by fraud, deceit, misrepresentation or subterfuge, or by the forgery or alteration of a prescription, or by the use of a false name or the giving of a false address. (1955, c. 1330, s. 2; 1959, c. 1215, s. 1.)

§ 90-113.3. **Exemptions.** — (a) The provisions of subdivisions (1) and (3) of § 90-113.2 shall not be applicable:

(1) To the delivery of barbiturate or stimulant drugs for medical or scientific purposes only to persons included in any of the classes named in subdivision (3) below, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

(2) To the possession of barbiturate or stimulant drugs by such persons named in subdivision (3) below or their agents or employees for such use.

(3) The classes of persons to whom the above-mentioned delivery or possession provisions shall not apply are:

a. Pharmacists;

b. Practitioners;

c. Persons who procure barbiturate or stimulant drugs:

1. For disposition by or under the supervision of pharmacists or practitioners employed by them, or

2. For the purpose of lawful research, teaching or testing and not for resale;

d. Hospitals and other institutions which procure barbiturate or stimulant drugs for lawful administration by or under the supervision of practitioners;

e. Manufacturers and wholesalers; and

f. Carriers and warehousemen.

(b) Nothing contained in § 90-113.2 shall make it unlawful for a public officer, agent or employee, or person aiding such public officer in performing his official duties to possess, obtain, or attempt to obtain a barbiturate or stimulant drug for the purpose of enforcing the provisions of any law of this State or of the United States relating to the regulation of the handling, sale or distribution of barbiturate or stimulant drugs. (1955, c. 1330, s. 3; 1959, c. 1215, s. 1.)

§ 90-113.4. **Complaints, etc., need not negative exceptions, excuses or exemptions; burden of proof.**—In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant. (1955, c. 1330, s. 4; 1959, c. 1215, s. 1.)

§ 90-113.5. **Retention of invoices by persons within exemptions.**— Persons, other than carriers, to whom the exemptions to this article are applicable shall retain all invoices relating to barbiturate or stimulant drugs manufactured, purchased, sold or handled for not less than two calendar years after the date of the transaction shown by such invoice. (1955, c. 1330, s. 4½; 1959, c. 1215, s. 1.)

§ 90-113.6. **Enforcement of article; co-operation with federal authorities; investigations.**—It is hereby made the duty of the State Board of Pharmacy, its officers, agents, inspectors and representatives, and of all peace officers, within the State, including the State Bureau of Investigation, and of all State's attorneys, to enforce all provisions of this article, except those specifically delegated, and to co-operate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states, relating to barbiturate or stimulant drugs. The State Bureau of Investigation is hereby authorized to make initial investigations of all violations of this article, and is given original but not exclusive jurisdiction in respect thereto with all other law enforcement officers of the State. (1955, c. 1330, s. 5; 1959, c. 1215, s. 1.)

§ 90-113.7. **Penalties.**—Any person violating any provision of this article or any person who conspires, aids, abets, or procures others to violate any provision of this article shall for the first offense be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than two years, or both, in the discretion of the court. For a second violation of this article, or in case of a first conviction of a violation of this article by a defendant who shall previously have been convicted of a violation of any law of the United States, or of this or any other state, territory or district, relating to the possession, delivery or use of the drugs defined in this article which violation would have been punishable under this article if the offending act had been committed in this State, the defendant shall be guilty of a felony and fined or imprisoned, or both, in the discretion of the court. (1955, c. 1330, s. 6; 1959, c. 1215, s. 1.)

Article 6.

Optometry.

§ 90-114. Optometry defined.

Neither an optician nor an optometrist is permitted to use any medicine to treat the eye in order to relieve irritation or for any other trouble which requires the use of drugs. High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

Fitting Contact Lenses.—It is apparent from an examination of the statutes defining the practice of optometry and the business of a dispensing optician that the General Assembly has not expressly authorized either the optometrist or the optician to fit contact lenses to the human eye, but that the general terms of the statutes governing both are broad enough to authorize the optometrist to do so and to authorize the dispensing optician to do so upon prescription of a physician, oculist or optometrist. High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

§ 90-115. Practice without registration unlawful.

Cited in High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

§ 90-118. Examination for practice; prerequisites; registration.

(2) He shall present to the Board evidence satisfactory to the Board that the applicant is a person of good moral character.

(1959, c. 464.)

Editor's Note.—

The 1959 amendment rewrote subdivision (2). As the rest of the section was not affected by the amendment it is not set out.

§ 90-122. **Compensation of Board; surplus funds.**—Out of the funds coming into possession of said Board each member thereof may receive as compensation the sum of ten dollars for each day he is actually engaged in the duties of his office and reimbursement for travel and other expenses, which in the opinion of the Board are properly and necessarily incurred in the performance of his or her duties as a member of said Board. Such expenses shall be paid from the fees and assessments received by the Board under the provisions of this article, and no part of the salary or other expenses of the Board shall ever be paid out of the State treasury. All moneys received in excess of per diem allowance and mileage, as above provided, shall be held by the secretary as a special fund for meeting expenses of the Board and carrying out the provisions of this article, and he shall give the State such bond as the Board shall from time to time direct for the faithful performance of his duties, and the Board shall make an annual report of its proceedings to the Governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this article. The secretary-treasurer shall receive from the

funds of the Board such salary as may be determined by the Board. (1909, c. 444, s. 11; C. S., s. 6695; 1923, c. 42, s. 4; 1935, c. 63; 1959, c. 574.)

Editor's Note.—
The 1959 amendment rewrote the latter part of the first sentence dealing with reimbursement for travel and other expenses.

§ 90-123. Annual fees; failure to pay; revocation of license; collection by suit.—For the use of the Board in performing its duties under this article, every registered optometrist shall, in every year after the year 1959 pay to the Board of Examiners the sum of not exceeding twenty-five dollars ($25.00), the amount to be fixed by the Board, as a license fee for the year. Such payments shall be made prior to the first day of April in each year, and in case of default in payment by any registered optometrist his certificate may be revoked by the Board at the next regular meeting of the Board after notice as herein provided. But no license shall be revoked for nonpayment if the person so notified shall pay, before or at the time of consideration, his fee and such penalty as may be imposed by the Board. The penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed ten and no/100 dollars ($10.00). The Board of Examiners may collect any dues or fees provided for in this section by suit in the name of the Board. The notice hereinbefore mentioned shall be in writing, addressed to the person in default in the payment of dues or fees herein mentioned at his last known address as shown by the records of the Board, and shall be sent by the secretary of the Board by registered mail, with proper postage attached, at least twenty (20) days before the date upon which revocation of license is considered, and the secretary shall keep a record of the fact and of the date of such mailing. The notice herein provided for shall state the time and place of consideration of revocation of the license of the person to whom such notice is addressed. (1909, c. 444, s. 12; C. S., s. 6696; 1923, c. 42, s. 5; 1933, c. 492; 1937, c. 362, s. 1; 1959, c. 477.)

Editor's Note.—
The 1959 amendment increased the annual fee from not exceeding fifteen dollars to not exceeding twenty-five dollars and increased the penalty from not exceeding five dollars to not exceeding ten dollars.

§ 90-124. Discipline, suspension, revocation and regrant of certificate.

Editor's Note.—
For comment on the 1955 amendment, see 33 N. C. Law Rev. 519.

§ 90-125. Practicing under other than own name or as a salaried or commissioned employee.

Cited in High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

§ 90-126. Violation of article forbidden.

Cited in High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

§ 90-126.1. Board may enjoin illegal practices.

Cited in High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

Article 7.

Osteopathy.

§ 90-131. Educational requirements, examination and certification of applicants.—Any person, before engaging in the practice of osteopathy in this State, after June 3, 1959, shall, upon the payment of a fee of twenty-five dollars ($25.00), make application for a certificate to practice osteopathy to the

Board of Osteopathic Examination and Registration on a form prescribed by the Board, giving, first, his name, age (which shall not be less than twenty-one years), and residence; second, evidence that such applicant is of good character and shall have, previous to the beginning of his course in osteopathy, obtained a diploma from a high school, or academy, or its equivalent, and evidence of having completed not less than two years if he matriculated in an osteopathic college before October 1, 1952, and if thereafter three years pre-osteopathic education in an accredited college or university approved by the Board; third, the date of his diploma, and evidence that such diploma was granted on personal attendance and completion of a course of not less than four academic years conforming to the minimum standards for osteopathic colleges established by the American Osteopathic Association. The Board may require the applicant to file an affidavit as to any facts pertaining to his application for a license to practice osteopathy and shall, except as otherwise provided, give to applicants a written examination in the subjects of anatomy, physiology, biochemistry, toxicology, chemistry, osteopathic pathology, bacteriology, histology, diagnosis, hygiene, osteopathic obstetrics and gynecology, minor surgery, principles and practice of osteopathy, and such other like subjects as the Board may require. An applicant passing said examination with a minimum grade in each subject of seventy per cent (70%) and a minimum general average of seventy-five per cent (75%) in all subjects and who otherwise meets the requirements of this article shall be licensed to practice osteopathy as defined in § 90-129. The Board is authorized to promulgate rules and regulations to carry out the provisions of this article; and to employ qualified personnel including persons or organizations specially qualified in preparing, giving and grading examinations to assist or advise the Board. The Board may refuse to grant a certificate to any person convicted of a felony, or a crime involving moral turpitude or who engages in gross unprofessional or immoral conduct, or who is addicted to any vice to such a degree as to render him unfit to practice osteopathy, and may, after due notice and hearing, revoke such certificate for like cause. (1907, c. 764, s. 2; 1913, c. 92, s. 1; C. S., s. 6702; 1959, c. 705, s. 1.)

Editor's Note.—The 1959 amendment rewrote this section. Section 3 of the amendatory act provides that no person who was authorized to practice osteopathy in this State on June 3, 1959, shall be compelled to take and pass a new examination by reason of the rewriting of G. S. 90-131.

§ 90-132. When examination dispensed with; temporary permit; annual registration.—The Board may, in its discretion, dispense with an examination in the case of an osteopathic physician duly authorized to practice osteopathy in any other state or territory, or the District of Columbia, who presents a certificate of license issued after an examination by the legally constituted board of such state, territory, or District of Columbia, accorded only to applicants of equal grade with those required in this State or who presents a certificate issued by the National Board of Examiners for Osteopathic Physicians and Surgeons, and who makes application on a form to be prescribed by the Board, accompanied by a fee of seventy-five dollars ($75.00).

The secretary of the Board may grant a temporary permit until a regular meeting of the Board, or to such time as the Board can conveniently meet, to one whom he considers eligible to practice in the State, and who may desire to commence the practice immediately. Such permit shall only be valid until legal action of the Board can be taken. In all the above cases the fee shall be the same as charged to applicants for examination.

Every person heretofore or hereafter licensed to practice osteopathy by said Board of Osteopathic Examination and Registration shall, during the month of January of each year, register with the secretary of said Board his name and office and residence address and such other information as the Board may deem necessary and shall pay a registration fee fixed by the Board not in excess of five

dollars ($5.00). An annual registration receipt shall be issued and mailed to each license holder, upon payment of the registration fee, which shall be placed in a conspicuous position in the licensee's office, if he practices in this State. In the event an osteopath fails to register as herein provided he shall pay an additional amount of ten dollars ($10.00) to the Board. Should an osteopath fail to register and pay the fees imposed, and should such failure continue for a period of thirty days, the license of such osteopath may be suspended by the Board, after notice and hearing at the next regular meeting of the Board. Upon payment of all fees and penalties which may be due, the license of such osteopath shall be reinstated. (1907, c. 764, s. 2; C. S., s. 6703; 1959, c. 705, s. 2.)

Editor's Note.—The 1959 amendment rewrote this section.

Article 8.

Chiropractic.

§ 90-140. Appointment; term; successors; recommendations.—The Governor shall appoint the members of the State Board of Chiropractic Examiners, whose terms of office shall be as follows: One member shall be appointed for a term of one year from the close of the next regular annual meeting of the North Carolina Chiropractic Association; one member shall be appointed for a term of two years from such time, and one member shall be appointed for a term of three years from such time. Annually thereafter, at the time of the annual meeting or immediately thereafter the Governor shall appoint one member of the State Board of Chiropractic Examiners, whose term of office shall be three years, and such members of the Board of Examiners shall be appointed from a number of not less than five who shall be recommended by the North Carolina Chiropractic Association. The term of office of any member of the Board of Examiners shall continue until his successor is appointed and qualified. (1917, c. 73, s. 2; C. S., s. 6711; 1933, c. 442, s. 1; 1963, c. 646, s. 1.)

Editor's Note.—

The 1963 amendment added the last sentence of this section.

§ 90-143. Definitions of chiropractic; examinations; educational requirements.—Chiropractic is herein defined to be the science of adjusting the cause of disease by realigning the twenty-four moveable vertebrae of the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the Board of Examiners to examine all applicants who shall furnish satisfactory proof of good character and of graduation from a regular chiropractic school of good standing, and such examination shall embrace such branches of study as are usually included in the regular course of study for chiropractors in chiropractic schools or colleges of good standing, including especially an examination of each applicant in the science of chiropractic as herein defined. Every applicant for license shall furnish to said Board of Examiners sufficient and satisfactory evidence that, prior to the beginning of his course in chiropractic, he had obtained a high school education, or what is equivalent thereto, entitling him to admission in a reputable college or university; he shall satisfy Board of Examiners that he has completed two years of college work and received credits for a minimum of forty-eight semester hours or the equivalent thereof, provided persons now enrolled in, or who have already completed a course at, a reputable chiropractic college shall be exempt from this requirement; and he shall also exhibit to said Board of Chiropractic Examiners, or satisfy them that he holds, a diploma from a reputable chiropractic college, and not a correspondence school, and that said diploma was granted to him on a personal attendance and completion of a regular four years'

course in such chiropractic college, and such applicant shall be examined in the following studies: Chiropractic analysis, chiropractic philosophy, chiropractic neurology, palpation, nerve tracing, microscopy, histology, anatomy, gynecology, jurisprudence, chemistry, pathology, hygiene, physiology, embryology, eye, ear, nose, and throat, dermatology, symptomology, spinography, chiropractic orghopody, and the theory, teaching and practicing of chiropractic.

Provided further, that the said State Board of Chiropractic Examiners may license by reciprocity, upon application, any chiropractor holding a license issued to him by a regular board of chiropractic examiners in another state when said Board is satisfied that such applicant has educational qualifications, or the equivalent thereof, equal to those prescribed by said Board for admission to practice chiropractic in this State, and upon proof of good moral character and that he has practiced chiropractic under such license for at least one year. (1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5; C. S., s. 6715; 1933, c. 442, s. 1; 1937, c. 293, s. 1; 1963, c. 646, s. 2.)

Editor's Note.— The 1963 amendment inserted in the first paragraph the requirement of two years of college work.

§ 90-154. Grounds for refusal, suspension or revocation of license.—The Board of Chiropractic Examiners may suspend or refuse to grant or may revoke a license to practice chiropractic in this State, upon the following grounds: Immoral conduct, bad character, the conviction of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate him or her for the performance of such professional duties, unethical advertising, unprofessional or dishonorable conduct unworthy of and affecting the practice of his profession. (1917, c. 73, s. 14; C. S., s. 6725; 1949, c. 785, s. 3; 1963, c. 646, s. 3.)

Editor's Note.— The 1963 amendment inserted the words "suspend or" near the beginning of the section.

§ 90-155. Annual fee for renewal of license.—Any person practicing chiropractic in this State, in order to renew his license, shall, on or before the first Tuesday after the first Monday in January in each year after a license is issued to him as herein provided, pay to the secretary of the Board of Chiropractic Examiners a renewal license fee of ten dollars ($10.00), and shall furnish the Board evidence that he has attended two days of educational sessions or programs approved by the Board during the preceding twelve months, provided the Board may waive this educational requirement due to sickness or other hardship of applicant.

Any license or certificate granted by the Board under this article shall automatically be cancelled if the holder thereof fails to secure a renewal within thirty (30) days from the time herein provided; but any license thus cancelled may, upon evidence of good moral character and proper proficiency, be restored upon the payment of fifteen dollars ($15.00). (1917, c. 73, c. 15; C. S., s. 6726; 1933, c. 442, s. 4; 1937, c. 293, s. 2; 1963, c. 646, s. 4.)

Editor's Note.— The 1963 amendment rewrote the first paragraph and substituted "thirty (30) days" for "three months" in the second paragraph.

ARTICLE 9.

Registered Nurses.

§ 90-158.14. Fees.—Every applicant for license to practice nursing as a registered nurse in North Carolina, whether by examination or by reciprocity, shall pay to the Board at the time of making of application a fee of twenty dollars ($20.00). Any applicant who fails to pass the examination by the Board may

take another examination with payment of fee in the same amount; provided, however, the second examination is taken within two years of the date of the first examination. Upon the failure of an applicant to pass the second examination, the Board may require the applicant to complete additional courses of study designated by the Board, and before taking any such subsequent examination the applicant shall present to the Board satisfactory evidence of having completed such additional course of study and shall pay an additional fee in the same amount as that required by this statute for the filing of an original application. (1953, c. 1199, s. 1; 1961, c. 431, s. 1.)

Editor's Note. — The 1961 amendment increased the license application fee from fifteen to twenty dollars.

Article 9A.

Practical Nurses.

§ 90-171.3. Applicants; qualifications; procedure. — Any applicant who desires to obtain a license to practice as a licensed practical nurse shall submit to the Board, on forms furnished by the Board, satisfactory written evidence under oath that the applicant is at least eighteen years of age, is a citizen of the United States, or has legally declared intention of becoming a citizen, is of good moral character, is in good physical and mental health, has completed an education through the first year high school, or its equivalent, and has succcessfully completed a course of training for practical nursing approved and accredited by the Board Enlarged. Any person who has not completed a course of training for practical nursing approved and accredited by the Board Enlarged may nevertheless be an applicant for a license to practice as a licensed practical nurse and to obtain such license by examination as provided by G. S. 90-171.4 by submitting to the Board, on forms furnished by the Board, satisfactory written evidence under oath that such person

(1) Is at least twenty-one years of age;
(2) Is a citizen of the United States or has legally declared intention of becoming a citizen;
(3) Is of good moral character;
(4) Is in good physical and mental health;
(5) Has completed an education through the first year of high school, or its equivalent; and
(6) Has either satisfactorily completed eighteen months of practical and theoretical instruction in a school of nursing meeting the minimum requirements and standards established by article 9 of chapter 90 of the General Statutes for the education of persons desiring to become registered nurses, or has had twenty-four months of actual experience in practical nursing, such period of service and competency as a practical nurse to be certified by two physicians, or by one physician and one registered nurse, licensed to practice in the State of North Carolina.

The application shall be accompanied by a fee of fifteen dollars ($15.00) for examination and certification. Provided, that any person, who has not completed a course of training for practical nursing approved and accredited by the Board Enlarged, and who desires to be an applicant to practice as a licensed practical nurse under the conditions set forth in the second sentence in this section, shall file such application and complete and submit such forms as may be necessary to the Board on or before July 1, 1956, and no applications filed under this proviso after said date shall be considered or granted. (1947, c. 1091, s. 1; 1953, c. 750; 1953, c. 1199, s. 4; 1955, c. 1266, s. 2; 1961, c. 431, s. 2.)

Editor's Note.— The 1961 amendment increased the license application fee in the first line of the last paragraph from ten to fifteen dollars.

§ 90-171.5. License without examination. — Persons twenty years of age or over now practicing as undergraduate nurses, practical nurses, or performing similar services under any other title may make application to the Board for licensure as a licensed practical nurse under this provision on or before July 1st, 1949. The above application shall be made on forms furnished by the Board, in the manner prescribed by the Board and verified by oath. The Board, without requiring an examination, shall issue a license to practice as a licensed practical nurse to any person found to be a citizen of the United States and a resident of North Carolina, twenty years of age or more, of good moral character, in good physical and mental health, and to have lived in and cared for the sick as a vocation in this State for two years immediately preceding the date of such application.

Before such license is issued such applicant must be favorably endorsed by two physicians licensed to practice in North Carolina who have personal knowledge of the applicant's qualifications as a practical nurse, must be endorsed by two persons who have employed the applicant in the capacity of a practical nurse.

The fee for each such license shall be seven dollars and fifty cents ($7.50) and shall accompany each application filed under this section.

The Board upon written application and such references and proof of identity as it may by rule prescribe may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a practical nurse, licensed or trained attendant, or as a person entitled to perform similar services under any other title under the laws of any other state, if in the opinion of the Board the applicant meets the preliminary requirements for licensed practical nurses under the provisions of this article upon application in the prescribed manner accompanied by a fee of fifteen dollars ($15.00). (1947, c. 1091, s. 1; 1961, c. 431, s. 2.)

Editor's Note. — The 1961 amendment increased the license application fee at the end of the last paragraph from ten to fifteen dollars.

ARTICLE 11.

Veterinaries.

§ 90-179. North Carolina Veterinary Medical Association, Incorporated.—The association of veterinary surgeons and physicians calling themselves the North Carolina Veterinary Medical Association is declared to be a body politic and corporate under the name and style of the North Carolina Veterinary Medical Association. (1903, c. 503; Rev., s. 5431; C. S., s. 6754; 1961, c. 353, s. 1.)

Editor's Note.—The 1961 amendment omitted the word "State" formerly appearing after "North Carolina" in the name of the Association.

§ 90-179.1. Definitions.—When used in this chapter, unless the context otherwise requires:

(1) "Board" means the veterinary medical board of the State of North Carolina;

(2) "Veterinary" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association;

(3) "Applicant" means an applicant for a license to practice veterinary medicine;

(4) "License" means a certificate of license to practice veterinary medicine in North Carolina, issued pursuant to the provisions of G. S. 90-183 of the General Statutes of North Carolina;

(5) "Temporary permit" means a temporary permit to practice veterinary medicine, issued pursuant to G. S. 90-183 of the General Statutes of North Carolina;

(6) "Animal" means any mammal other than man;
(7) The "practice of veterinary medicine" means the practice of any person who:
a. Diagnoses, prognoses, treats, administers to, prescribes for, operates on, manipulates, or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound, or physical condition of any animal or for the prevention of or to test for the presence of any disease of any animal, or who holds himself out as being able or legally authorized to act in such manner;
b. Practices dentistry or surgery on any animal;
c. Represents himself as engaged in the practice of veterinary medicine as defined in paragraphs a and b of this subsection;
d. Uses any words, letters or titles in such connection and under such circumstances as to induce the belief that the person using them is engaged in or is legally qualified for the practice of veterinary medicine. (1961, c. 353, s. 2.)

§ 90-180. North Carolina Veterinary Medical Board; appointment, terms and qualifications of members; oaths.—In order to properly regulate the practice of veterinary medicine and surgery, there shall be a board to be known as the North Carolina Veterinary Medical Board which shall consist of five members appointed by the Governor. When and as the terms of the present members expire, the Governor shall annually appoint one member of such Board, who shall hold his office for five years, and until his successor is appointed and qualified. Every person so appointed shall, within 30 days after notice of appointment appear before the clerk of the superior court of the county in which he resides and take oath to faithfully discharge the duties of his office.

Each member shall have been a legal resident of this State and licensed to practice veterinary medicine in this State for not less than five years prior to his appointment. No person who has been appointed a member of the Board shall continue on said Board if during the term of his appointment he shall

(1) Transfer his legal residence to another state; or
(2) Be or become the owner of, or be employed by, any wholesale or jobbing house dealing in supplies, equipment, or instruments used or useful in the practice of veterinary medicine; or
(3) Have his license to practice veterinary medicine rescinded for cause in accordance with the provisions of chapter 150 of the General Statutes. (1903, c. 503, s. 2; Rev., s. 5432; C. S., s. 6755; 1961, c. 353, s. 3.)

Editor's Note.—The 1961 amendment rewrote this section.

§ 90-182. Compensation of members of Board.—Each member of the Board may for personal expenses receive up to twenty-five dollars ($25.00) for each day, or portion thereof, he is actually engaged in the discharge of his duties. None of the expenses of the Board or of the members shall be paid by the State. (1903, c. 503, s. 9; Rev. s. 5434; C. S., s. 6757; 1961, c. 353, s. 4.)

Editor's Note.—The 1961 amendment rewrote the first sentence of this section.

§ 90-183. Examination and licensing of veterinaries. — The Board of Examiners shall, at its annual meeting, examine all applicants who desire license to practice veterinary medicine or surgery in the State of North Carolina. To entitle a person to such examination, each applicant shall have attained the age of 21 years and shall be a person of good moral character and shall furnish said Board of Examiners with satisfactory evidence that said applicant is a graduate of a reputable and accredited veterinary school, college or university ac-

cepted and approved by the American Veterinary Medical Association. If upon such examination the applicant be found to possess sufficient skill to practice veterinary medicine or surgery, a license or certificate shall be issued to him. No certificate shall be granted except with a concurrence of a majority of the members present. To prevent delay and inconvenience two members of the Board of Examiners may grant a temporary certificate to practice veterinary medicine or surgery which shall be in force only until the next regular meeting of the Board of Examiners, but in no case shall such temporary certificate be granted to any person who theretofore has been an unsuccessful applicant for a certificate before the Board. The Board shall have power to require such applicant to pay a fee of not more than twenty-five dollars ($25.00) before issuing a certificate, and ten dollars ($10.00) before issuing a temporary certificate. (1903, c. 503, ss. 3, 5, 8; Rev., s. 5435; C. S., s. 6758; 1951, c. 749; 1961, c. 353, s. 5.)

Editor's Note.—

The 1961 amendment deleted the words "United States Bureau of Animal Industry and the United States Army" formerly appearing at the end of the second sentence and substituted therefor the words "American Veterinary Medical Association."

§ 90-183.1. Certificates to registered applicants of other states. — Applicants registered or certified by examiners of other states whose requirements are equal to those of this State may, in the discretion of the Board, and upon payment of a fee of twenty-five dollars ($25.00), be granted a certificate without examination: Provided, that the provisions of this section shall be extended only to those states which extend to this State the same privilege. (1959, c. 744.)

§ 90-183.2. Annual registration with Board; fee.—Every person heretofore or hereafter licensed to practice veterinary medicine by said Board shall during the month of January, 1962, and during the month of January in every year thereafter, register with the secretary-treasurer of said Board his name and office and residence address and such other information as the Board may deem necessary and shall pay a registration fee fixed by the Board not in excess of five dollars ($5.00). In the event a veterinarian fails to register as herein provided within 30 days after notification by certified mail to his last known home address, he shall pay an additional amount of ten dollars ($10.00) to the Board. Should a veterinarian fail to register and pay the fees imposed, the license of such veterinarian may be suspended by the Board. Upon payment of all fees which may be due, the license of any such veterinarian shall be reinstated. (1961, c. 353, s. 6.)

§ 90-184. Refusal, suspension or revocation of license or permit. —The Board may refuse to issue a license or a temporary permit to any applicant, may issue a reprimand, or suspend or revoke the license or the temporary permit of any person licensed to practice veterinary medicine who:

(1) In the conduct of his practice does not conform to the rules prescribed by the Board for proper sanitary and hygienic methods to be used in the care and treatment of animals;

(2) Is found guilty of fraud in completing the examination conducted by the Board;

(3) Is found to be addicted to the alcohol or drug habit to such a degree as to render him unfit to practice veterinary medicine;

(4) Employs directly or indirectly a solicitor for the purpose of obtaining patients;

(5) Advertises in a manner which is false or misleading or has for its purpose an intent to deceive or defraud;

(6) Has professional association with or lends his name to any unlicensed person for the purpose of, or in such manner as to encourage or permit practice of veterinary medicine directly or indirectly by persons other than those licensed under this article;

(7) Divides fees or charges or has any arrangement to share fees or charges with any other person, except on the basis of services performed;
(8) Is convicted of any felony or crime involving moral turpitude;
(9) Is convicted of sale of narcotics or other dangerous drugs in violation of law;
(10) Swears falsely in any affidavit required to be made by him in the course of his practice of veterinary medicine;
(11) Fails to report promptly to the proper official any dangerous, infectious, or contagious disease;
(12) Fails to report promptly the results of tests when required to do so by law or regulation;
(13) Fraudulently issues or uses any health certificate, inspection certificate, vaccination certificate, test chart, or other blank form used in the practice of veterinary medicine, relating to the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption;
(14) Willfully makes any misrepresentation in the inspection of food stuffs;
(15) Fraudulently applies or reports any intradermal, cutaneous, subcutaneous, serological, or chemical test.

Before the Board may revoke or suspend a license, or otherwise discipline the holder of a license, written charges shall be filed with the Board by the secretary and a hearing shall be had thereon as provided by chapter 150 of the General Statutes of North Carolina. (1903, c. 503, s. 10; Rev., s. 5436; C. S., s. 6759; 1953, c. 1041, s. 16; 1961, c. 353, s. 7.)

Editor's Note.—
The 1961 amendment rewrote this section.

§ **90-184.1. Reinstatement of license or permit.**—Any person whose license or temporary permit is suspended or revoked may, at the discretion of the Board, be relicensed to practice at any time without an examination, on application made to the Board. Such application for reinstatement shall be in writing, in a form prescribed by the Board, signed by the applicant, and shall be delivered to the secretary of the Board.

Any person whose license or temporary permit to practice veterinary medicine is suspended or revoked shall be deemed an unlicensed person. (1961, c. 353, s. 8.)

§ **90-184.2. Enforcement.**—The Board shall enforce the provisions of this article and for that purpose shall make investigations relative thereto. If the Board has knowledge or notice of a violation of this article, it shall investigate and, upon probable cause appearing, shall direct the secretary to file a complaint and institute the prosecution of the offender. (1961, c. 353, s. 8.)

§ **90-184.3. Practice in name of prior licensee.**—Wherever the practice of veterinary medicine is continued in the name of a prior licensee, said name may not be used for more than two years after the death or cessation of active participation by such licensee. (1961, c. 353, s. 8.)

§ **90-184.4. Partnerships.**—Whenever the practice of veterinary medicine is carried on by a partnership, all partners must be either licensed or the holders of temporary permits. (1961, c. 353, s. 8.)

§ **90-186. Necessity for license; certain practices exempted.**—No person shall engage in the practice of veterinary medicine in this State or attempt to do so without having first applied for and obtained a license for such purpose from the North Carolina Veterinary Medical Board, or without having first obtained from said Board a certificate of renewal of license for the calendar year in which such person proposes to practice and until he shall have been first

licensed and registered for such practice in the manner provided in this article and the rules and regulations of the said Board.

Nothing in this article shall be construed to prohibit:

(1) Any person from administering to animals, the title to which is vested in himself, except when said title is so vested for the purpose of circumventing the provisions of this article;

(2) Any person who is a regular student or instructor in a legally chartered college from the performance of those duties and actions assigned as his responsibility in teaching or research;

(3) Any veterinarian who is a member of the armed forces of the United States or who is an employee of the United States Department of Agriculture, the United States Public Health Service or other federal agency, or the State of North Carolina, or political subdivision thereof, from performing official duties while so commissioned or employed;

(4) Any person from such practices as permitted under the provisions of G. S. 90-185, chapter 17, Private Laws 1937, or chapter 5, Private Laws 1941;

(5) Any person from dehorning animals or castrating male food animals;

(6) Any person from providing for or assisting in the practice of artificial insemination;

(7) Any physician licensed to practice medicine in this State, or his assistant, while engaged in medical research;

(8) Any rabies inspector duly appointed and acting within the provisions of G. S. 106-365 and 106-366. (1903, c. 503, s. 12; Rev., s. 5438; C. S., s. 6761; 1961, c. 353, s. 9.)

Editor's Note.—The 1961 amendment rewrote this section.

§ 90-187. Unauthorized practice; penalty.—If any person shall practice or attempt to practice veterinary medicine in this State without first having passed the examination and obtained a license or temporary permit from the North Carolina Veterinary Medical Board; or if he shall practice veterinary medicine without the renewal of his license, as provided in G. S. 90-183.2; or shall practice or attempt to practice veterinary medicine while his license is revoked, or suspended, or when a certificate of license has been refused; or shall violate any of the provisions of this article, said person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or imprisonment at the discretion of the court, or both fined and imprisoned; and each act of such unlawful practice shall constitute a distinct and separate offense. (1913, c. 129, s. 2; C. S., s. 6762; 1961, c. 353, s. 10; c. 756.)

Editor's Note.—The first 1961 amendment rewrote this section. The second 1961 amendment substituted "G. S. 90-183.2" for "G. S. 90-183.1."

ARTICLE 12.

Chiropodists.

§ 90-188. Podiatry defined.—Podiatry as defined by this article is the surgical or medical or mechanical treatment of all ailments of the human foot, except the correction of deformities requiring the use of the knife, amputation of the foot or toes, or the use of an anesthetic other than local. (1919, c. 78, s. 2; C. S., s. 6763; 1945, c. 126; 1963, c. 1195, s. 2.)

Editor's Note.—Pursuant to Session Laws 1963, c. 1195, s. 2, "Podiatry" has been substituted for "Chiropody."

§ 90-189. Unlawful to practice unless registered.—On and after the first of July, one thousand nine hundred and nineteen, it shall be unlawful for any person to practice or attempt to practice podiatry in this State or to hold himself out as chiropodist (podiatrist) or to designate himself or describe his occupation by the use of any words or letters calculated to lead others to believe that he is a chiropodist (podiatrist) unless he is duly registered as provided in this article. (1919, c. 78, s. 1; C. S., s. 6764; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-190. Board of Podiatry Examiners; how appointed; terms of office.—There shall be established a Board of Podiatry Examiners for the State of North Carolina. This Board shall consist of three members who shall be appointed by the North Carolina Pedic Association. All of such members shall be chiropodists who have practiced podiatry in North Carolina for a period of not less than one year. The members of the Board shall be appointed by said Association for a term of three years: Provided, the members of the first Board shall be appointed to hold office for one, two and three years respectively, and one member shall be appointed annually thereafter by said Association. The Board shall have authority to elect its own presiding and other officers. (1919, c. 78, s. 3; C. S., s. 6765; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-191. Applicants to be examined; examination fee; requirements.—Any person not heretofore authorized to practice podiatry in this State shall file with the Board of Podiatry Examiners an application for examination accompanied by a fee of twenty-five dollars, together with proof that the applicant is more than twenty-one years of age, is of good moral character, and has obtained a preliminary education equivalent to four years' instruction in a high school and two (2) years of instruction in a college or university approved by the American Association of Colleges and Universities. Such applicant before presenting himself for examination, must be a graduate of a legally incorporated school of podiatry acceptable to the Board. (1919, c. 78, s. 9; C. S., s. 6766; 1963, c. 1195, ss. 1, 2.)

Editor's Note. — The 1963 amendment added "and two (2) years of instruction in a college or university approved by the American Association of Colleges and Universities" at the end of the first sentence.

Section 3 of the 1963 amendatory act provides that the amendment to this section shall not apply to present students of podiatry nor to persons previously licensed in this State or other states.

Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-192. Examinations; subjects; certificates.—The Board of Podiatry Examiners shall hold at least one examination annually for the purpose of examining applicants under this article. The examination shall be held at such time and place as the board may see fit, and notice of the same shall be published in one or more newspapers in the State. The Board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide such books, blanks and forms as may be necessary to conduct such examinations, and shall preserve and keep a complete record of all its transactions. Examinations for registration under this article shall be in the English language and shall be written, oral, or clinical, or a combination of written, oral, or clinical, as the Board may determine, and shall be in the following subjects wholly or in part: Anatomy, physiology, pathology, bacteriology, chemistry, diagnosis and treatment, therapeutics, clinical podiatry and asepsis; limited in their

scope to the treatment of the foot. No applicant shall be granted a certificate unless he obtains a general average of seventy-five or over, and not less than fifty per cent in any one subject. After such examination the Board shall, without unnecessary delay, act on same and issue certificates to the successful candidates, signed by each member of the Board; and the Board of Podiatry Examiners shall report annually to the North Carolina Pedic Association. (1919, c. 78, s. 4; C. S., s. 6767; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-194. Practitioners before enactment of this article; certificates.—Every person who is engaged in the practice of podiatry in this State one year next prior to the enactment of this article shall file with the Board of Podiatry Examiners on or before the first day of July, one thousand nine hundred and nineteen, a written application for a certificate to practice podiatry, together with proof satisfactory to the Board that the applicant is more than twenty-one years of age and has been practicing podiatry in this State for a period of more than one year next prior to the passage of this article, and upon the payment of a fee of ten dollars the said Board of Podiatry Examiners shall issue to such applicant a certificate to practice podiatry in this State. (1919, c. 78, s. 5; C. S., s. 6769; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-197. Revocation of certificate; grounds for; suspension of certificate.—The Board of Podiatry Examiners may revoke by a majority vote of its members, and in accordance with the provisions of chapter 150 of the General Statutes, any certificate it has issued, and cause the name of the holder to be stricken from the book of the registration by the clerk of the court in the city or county in which the name of the person whose certificate is revoked is registered, for any of the following causes:

(1) The willful betrayal of a professional secret.

(2) Any person who in any affidavit required of the applicant for certificate, registration, or examination under this article shall make a false statement.

(3) Any person convicted of a crime involving moral turpitude.

(4) Any person habitually indulging in the use of narcotics, ardent spirits, stimulants or any other substance which impairs intellect and judgment to such an extent as in the opinion of the Board to incapacitate such person for the performance of his professional duties.

The Board may, in accordance with the provisions of chapter 150 of the General Statutes, suspend any certificate granted under this article for a period not exceeding six months on account of any misconduct on the part of the person registered which would not, in the judgment of the Board, justify the revocation of his certificate. (1919, c. 78, ss. 12, 13; C. S., s. 6772; 1953, c. 1041, ss. 17, 18; 1963, c. 1195, s. 2.)

Editor's Note.— Pursuant to Session Laws 1963, c. 1195, s. 2, "Podiatry" has been substituted for "Chiropody."

§ 90-199. Annual fee of $10 required; cancellation or renewal of license.—On or before the first day of July of each year every chiropodist engaged in the practice of podiatry in this State shall transmit to the secretary-treasurer of the said North Carolina State Board of Podiatry Examiners his signature and post-office address, the date and year of his or her certificate, together with a fee to be set by the Board of Podiatry Examiners not to exceed ten ($10.00) dollars and receive therefor a renewal certificate. Any license or

certificate granted by said Board under or by virtue of this or the following section, shall automatically be cancelled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of thirty days after the thirty-first day of July of each year, and such delinquent chiropodist shall pay a penalty of five dollars for reinstatement: Provided that any legally registered chiropodist in this State who has retired from practice or who has been absent from the State may, upon furnishing affidavit to that effect, reinstate himself by paying all fees due for the years in which he was absent or retired, the said amount in no case to exceed fees for five years. (1931, c. 191; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-200. Issuance of license upon payment of fees. — Upon payment of the fees prescribed in the above section, by or before July first, nineteen hundred and thirty-one, by any person who has heretofore practiced podiatry in the State of North Carolina, for a period of five successive years regularly, it shall be the duty of the State Board of Podiatry Examiners to issue to said person a license which shall grant to such person all the rights and privileges of chiropodists now engaged in practicing podiatry. (1931, c. 191; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-201. Unlawful practice of podiatry a misdemeanor.—Any person who shall practice or attempt to practice podiatry in this State without having complied with the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, or shall be imprisoned for not less than thirty nor more than ninety days. Nothing in this article shall be construed to interfere with physicians in the discharge of their professional duties. (1919, c. 78, s. 10; C. S., s. 6774; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

§ 90-202. Sheriffs and police to report violators of this article.— It shall be the duty of the police department of the cities and the sheriff of each county in the State to see that all practitioners of podiatry in the State are legally registered according to the provisions of this article, and to report to the State's attorney of the city or county all cases of violation of this article; whereupon the State's attorney shall promptly prosecute those violating the provisions of this article. (1919, c. 78, s. 11; C. S., s. 6775; 1963, c. 1195, s. 2.)

Editor's Note. — Pursuant to Session Laws 1963, c. 1195, s. 2, "podiatry" has been substituted for "chiropody."

Article 15.

Autopsies.

§ 90-217. Limitation upon right to perform autopsy.

Editor's Note.— For note on autopsies and authority to use parts removed in treatment of the living, see 33 N. C. Law Rev. 653.

Article 17.

Dispensing Opticians.

§ 90-235. Definition.

Cross Reference.—See note to § 90-236.

§ 90-236. What constitutes practicing as a dispensing optician.

Neither an optician nor an optometrist is permitted to use any medicine to treat the eye in order to relieve irritation or for any other trouble which requires the use of drugs. High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

Fitting Contact Lenses.—It is apparent from an examination of the statutes defining the practice of optometry and the business of a dispensing optician that the General Assembly has not expressly authorized either the optometrist or the optician to fit contact lenses to the human eye, but that the general terms of the statutes governing both are broad enough to authorize the optometrist to do so, and to authorize the dispensing optician to do so upon prescription of a physician, oculist or optometrist. High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

So long as the dispensing optician fabricates, fits and inserts contact lenses in the eyes in accordance with the prescriptions of examining physicians or oculists, and requires the patient to return to the examining physician or oculist in order that the writer of the prescription may determine whether or not the prescription has been properly filled and the contact lenses properly measured, fabricated and fitted, such optician is not engaged in the practice of optometry within the meaning of this section. High v. Ridgeway's Opticians, 258 N. C. 626, 129 S. E. (2d) 301 (1963).

ARTICLE 18.

Physical Therapy.

§ 90-258. Qualifications of applicants for examination; application; subjects of examination; fee.—A person who desires to be registered as a physical therapist and who

(1) Is of good moral character;

(2) Has obtained a high school education or its equivalent as determined by the examining committee; and

(3) Has been graduated by a school of physical therapy approved for training physical therapists by the appropriate sub-body of the American Medical Association, if any, at the time of his graduation, or if graduated prior to 1936, the school or course was approved by the American Physical Therapy Association at the time of his graduation;

may make application, on a form furnished by the examining committee, for examination for registration as a physical therapist by the examining committee as defined in this article. Such examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics, physical therapy, as defined in this article, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this article. At the time of making such application, the applicant shall pay to the secretary-treasurer of the committee twenty-five dollars ($25.00), no portion of which shall be returned. (1951, c. 1131, s. 3; 1959, c. 630.)

Editor's Note.—Prior to the 1959 amendment the applicant was required to be at least twenty-one years old.

§ 90-261. Certificates of registration for persons registered in other states or territories.—The examining committee shall furnish a certificate of registration to any person who is a physical therapist registered under the laws of another state or territory, if the applicable requirements for registration of physical therapists were at the date of his registration substantially equal to the requirements under this article. At the time of making application, such applicant shall pay to the secretary-treasurer of the committee a fee of twenty-five dollars ($25.00). (1951, c. 1131, s. 6; 1959, c. 630.)

Editor's Note.—The 1959 amendment deleted the former second sentence and the latter part of the first sentence.

§ 90-261.1. Graduate students exempt from registration; registration of foreign-trained physical therapists. — (a) Physical therapists, including foreign-trained physical therapists, who are graduate students in special physical therapy courses receiving a small stipend rather than the usual staff salary for practicing their profession as part of their training, shall not be required to register as physical therapists in North Carolina. Any such physical therapist shall furnish sufficient information to the State examining committee for it to determine such person's status. At the end of one year, should the student wish to continue his education in this State, he must apply to the North Carolina State examining committee for evaluation of his status as of that time.

(b) A temporary certificate of registration, limited to six months, may be issued to a foreign-trained physical therapist who

(1) Makes the usual application for registration,

(2) Holds a diploma from an approved school of physical therapy in his own country,

(3) Is a member of a professional association belonging to World Confederation of Physical Therapists whose credentials are acceptable to the American Physical Therapy Association and to the North Carolina State examining committee of physical therapists, and

(4) Pays the required North Carolina registration fee.

(c) A regular certificate of registration may be issued to a foreign-trained physical therapist who fulfills the above requirements in subsection (b) of this section and who passes the next North Carolina State examination for registration or who has passed the American Physical Therapy Association's examination for foreign-trained physical therapists. (1959, c. 630.)

§ 90-262. Renewal of registration; lapse; revival.—Every registered physical therapist shall, during the month of January, 1953, and during the month of January every year thereafter, apply to the examining committee for an extension of his registration and pay a fee of five dollars ($5.00) to the secretary-treasurer. Registration that is not so extended in the first instance before February 1, 1953, and thereafter before February 1 of every successive year, shall automatically lapse. The examining committee shall revive and extend a lapsed registration on the payment of current fees provided the requirements for securing an original certificate have not been changed so as to have become more stringent than the requirements at the time the certificate lapsed, but the examining committee may refuse to grant any such extension on the same grounds as are set forth in § 90-263 for refusing to grant or for revoking the registration of a physical therapist. (1951, c. 1131, s. 7; 1959, c. 630.)

Editor's Note.—The 1959 amendment rewrote the last sentence of this section.

§ 90-263. Grounds for refusing registration; revocation. — The examining committee shall refuse to grant registration to any physical therapist or shall revoke the registration of any physical therapist if he

(1) Is habitually drunk or is addicted to the use of narcotic drugs;

(2) Has been convicted of violating any State or federal narcotic law;

(3) Has obtained or attempted to obtain registration by fraud or material misrepresentation;

(4) Is guilty of any act derogatory to the standing and morals of the profession of physical therapy, including the treatment or undertaking to treat ailments of human beings otherwise than by physical therapy and as authorized by this article, and undertaking to practice independent of the prescription, direction and supervision of a person licensed in this State to practice medicine and surgery.

The procedure for revocation shall be that set forth in chapter 150 of the Gen-

eral Statutes relating to uniform revocation of licenses. (1951, c. 1131, s. 8; 1959, c. 630.)

Editor's Note.—The 1959 amendment added the last paragraph.

Article 19.

Sterilization Operations.

§ 90-271. Operations lawful; consent required for operation on married person or person over twenty-one.—It shall be lawful for any physician or surgeon licensed by this State and acting in collaboration or consultation with at least one or more physicians or surgeons so licensed, when so requested by any person twenty-one years of age or over, or less than twenty-one years of age if legally married, to perform, in a hospital licensed by the Medical Care Commission, upon such person a surgical interruption of vas deferens or Fallopian tubes, as the case may be, provided a request in writing is made by such person at least thirty (30) days prior to the performance of such surgical operation, and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation; and provided, further, that a request in writing is also made at least thirty (30) days prior to the performance of the operation by the spouse of such person, if there be one, unless the spouse has been declared mentally incompetent, or unless a separation agreement has been entered into between the spouse and the person to be operated upon, or unless the spouse and the person to be operated upon have been divorced from bed and board or have been divorced absolutely. (1963, c. 600.)

§ 90-272. Operation on unmarried minor.—Any such physician or surgeon may perform a surgical interruption of vas deferens or Fallopian tubes upon any unmarried person under the age of twenty-one years when so requested in writing by such minor and in accordance with the conditions and requirements set forth in G. S. 90-271, provided that the juvenile court of the county wherein such minor resides, upon petition of the parent or parents, if they be living, or the guardian or next friend of such minor, shall determine that the operation is in the best interest of such minor and shall enter an order authorizing the physician or surgeon to perform such operation. (1963, c. 600.)

§ 90-273. Thirty-day waiting period.—No operation shall be performed pursuant to the provisions of this article prior to thirty (30) days from the date of consent or request therefor, or in the case of an infant, from the date of the order of the court authorizing the same, and in neither event if the consent for such operation is withdrawn prior to its commencement. (1963, c. 600.)

§ 90-274. No liability for nonnegligent performance of operation.—Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed by this State shall be liable either civilly or criminally by reason of having performed a surgical interruption of vas deferens or Fallopian tubes authorized by the provisions of this article upon any person in this State. (1963, c. 600.)

§ 90-275. Article does not affect eugenical or therapeutical sterilization laws.—Nothing in this article shall be deemed to affect the provisions of article 7 of chapter 35 of the General Statutes of North Carolina. (1963, c. 600.)

Chapter 90A.

Sanitarians.

§ 90A-1. Definitions. — (a) For the purpose of this chapter, "sanitarian" means a person who is qualified by education and experience in the biological and sanitary sciences to engage in the promotion and protection of the public health by the application of technical knowledge to solve problems of a sanitary nature and the development of methods for the control of man's environment for the protection of health, safety, and well-being.

(b) For the purpose of this chapter, "Board" means the State Board of Sanitarian Examiners. (1959, c. 1271, s. 1.)

Editor's Note. — The act inserting this chapter is effective as of Jan. 1, 1960.

§ 90A-2. State Board of Sanitarian Examiners created; composition; appointment and term of office.—In order to provide for the effective promotion of public health and the proper protection of life and property by those qualified in biological and sanitary sciences, there is hereby created a State Board of Sanitarian Examiners. The Board shall consist of the State Health Director, or his duly authorized representative; the Dean of the School of Public Health, University of North Carolina, or his duly authorized representative; the Director of the Division of Sanitary Engineering, State Board of Health; and four sanitarians, one local health director, and one public-spirited citizen to be appointed by the Governor. Prior to January 1, 1960, the Governor shall appoint one sanitarian for a term of one year; one sanitarian for a term of two years; one sanitarian and one local health director for a term of three years; and one sanitarian and one public-spirited citizen for a term of four years. Thereafter, as the term of an appointed member expires, or as a vacancy in the appointed membership occurs for any reason, the Governor shall appoint a successor for a term of four years, or for the remainder of the unexpired term, as the case may be.

The sanitarians appointed by the Governor must be registered sanitarians under the provisions of this chapter; provided, however, that this requirement shall not apply to members of the original Board during their initial terms of office. (1959, c. 1271, s. 2.)

§ 90A-3. Compensation and expenses of members; employees; administrative expenses. — Members of the Board shall receive ten dollars ($10.00) per day for each day actually spent in the performance of duties required by this chapter, plus actual travel expense. The Board may employ necessary personnel for the performance of its functions, and fix the compensation therefor, within the limits of funds available to the Board. The total ex-

pense of the administration of this chapter shall not exceed the total income therefrom; and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina. (1959, c. 1271, s. 3.)

§ 90A-4. **Chairman of Board; meetings; quorum; rules and regulations; seal; authority to administer oaths; membership by public employee.**—The Board shall annually elect a chairman from among its membership. The Board shall meet annually in the city of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. Five members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purposes, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board. The Board shall have an official seal and each member shall be empowered to administer oaths in the taking of testimony upon any matters pertaining to the functions of the Board. Membership on the Board of any public employee shall not constitute dual office holding but merely additional duties of such employee. (1959, c. 1271, s. 4.)

§ 90A-5. **Reports by Board.**—The Board shall file such reports as are required by chapter 93B of the General Statutes of North Carolina. (1959, c. 1271, s. 5.)

§ 90A-6. **Examination and certification of sanitarians; fee; qualifications.**—(a) The Board shall issue a certificate as a registered sanitarian to any applicant who pays a fee set by the Board but not to exceed twenty dollars ($20.00), who passes an examination to the satisfaction of the Board, and who submits evidence verified by oath and satisfactory to the Board that he:

(1) Is at least twenty-one years of age;
(2) Is of good moral character;
(3) Is a citizen of the United States, or has legally declared his intentions of becoming one;
(4) Has received a degree from a four-year educational institution rated as acceptable by the Board as provided in § 90A-7, with a major in biological and/or physical sciences; and
(5) Has had at least three years' experience, under the supervision of a registered sanitarian or under other equivalent supervision, in the field of environmental sanitation, or at least two years of such experience in the field of environmental sanitation plus one year of graduate study in sanitary science.

(b) The examination required by subsection (a) of this section shall be in a form prescribed by the Board, and may be oral, written, or both. The examination for unlicensed applicants shall be held annually, or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. Persons failing to pass the examination shall be refunded one half of the examination fee. Failure to pass an examination shall not prohibit such person from being examined at a subsequent time. (1959, c. 1271, s. 6.)

§ 90A-7. **Rating of educational institutions.** — For the purpose of determining the qualifications of applicants for certification and registration under this chapter, the Board may accept the ratings of educational institutions as issued by accrediting bodies acceptable to the Board. (1959, c. 1271, s. 7.)

§ 90A-8. **Certification and registration of persons performing sanitarian functions after January 1, 1960.** — Any person who, within six

months after January 1, 1960, submits to the Board under oath evidence satisfactory to the Board that he was performing functions as a sanitarian (as defined in § 90A-1) on January 1, 1960, shall be certified as a registered sanitarian upon the payment of a fee of not more than ten dollars ($10.00) as determined by the Board. The provisions of this section shall not apply to persons performing functions as a sanitarian's aide (as defined by the North Carolina Merit System Council) on January 1, 1960. (1959, c. 1271, s. 8.)

§ 90A-9. Certification and registration of sanitarian certified in other states.—The Board may, without examination, grant a certificate as a registered sanitarian to any person who, at the time of application, is certified as a registered sanitarian by a similar board of another state, district or territory whose standards are acceptable to the Board but not lower than those required by this chapter. A fee of not more than twenty dollars ($20.00), as determined by the Board, must be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section. (1959, c. 1271, s. 9.)

§ 90A-10. Renewal of certificates. — (a) A certificate as a registered sanitarian issued pursuant to the provisions of this chapter must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars ($10.00). The Board is authorized to charge an extra two-dollar late renewal fee for renewals made after the first day of January of each year.

(b) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate. (1959, c. 1271, s. 10.)

§ 90A-11. Suspension and revocation of certificates.—(a) The Board shall have the power to refuse to grant, or may suspend or revoke, any certificate issued under the provisions of this chapter for any of the causes hereafter enumerated:

(1) Conviction of a felony;
(2) Fraud, deceit, or perjury in obtaining registration under the provisions of this chapter;
(3) Habitual use of morphine, opium, cocaine, or any drug having a similar effect;
(4) Habitual drunkenness;
(5) Defrauding the public or attempting to do so; or
(6) Failing, for a period of more than six months after the renewal date, to renew his certificate, and has continued during that period to represent himself as a registered sanitarian.

(b) The procedure to be followed by the Board when it contemplates refusing to allow an applicant to take an examination, or to revoke or suspend a certificate issued under the provisions of this chapter, shall be in accordance with the provision of chapter 150 of the General Statutes of North Carolina. (1959, c. 1271, s. 11.)

§ 90A-12. Representing oneself as registered sanitarian without certificate prohibited; appending letters "R. S." to name.—No person shall offer his service as a registered sanitarian or use, assume or advertise in any way any title or description tending to convey the impression that he is a registered sanitarian unless he is the holder of a current certificate of registration issued by the Board. A holder of a current certificate of registration may append to his name the letters, "R. S.". (1959, c. 1271, s. 12.)

§ 90A-13. Violations; penalty; injunction. — It shall be unlawful for any person to represent himself as a registered sanitarian without being duly registered and the holder of a currently valid certificate of registration issued by the

Board. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and punishable in the discretion of the court. The Board is authorized to apply to any judge of the superior court for an injunction in order to prevent any violation or threatened violation of the provisions of this chapter. (1959, c. 1271, s. 13.)

Chapter 93.

Public Accountants.

§ 93-12. Board of Certified Public Accountant Examiners.

(2) To employ legal counsel, clerical and technical assistance and to fix the compensation therefor, and to incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this chapter. Upon request the Attorney General of North Carolina will advise the Board with respect to the performance of its duties and will assign a member of his staff, or approve the employment of counsel, to represent the Board in any hearing or litigation arising under this chapter. The Board may, in the exercise of its discretion, co-operate with similar boards of other states, territories and the District of Columbia in activities designed to bring about uniformity in standards of admission to the public practice of accountancy by certified public accountants, and may employ a uniform system of preparation of examinations to be given to candidates for certificates as certified public accountants, including the services and facilities of the American Institute of Certified Public Accountants, or of any other persons or organizations of recognized skill in the field of accountancy, in the preparation of examinations and assistance in establishing and maintaining a uniform system of grading of examination papers, provided however, that all examinations given by said Board shall be adopted and approved by the Board and that the grade or grades given to all persons taking said examinations shall be determined and approved by the Board.

(5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed examinations to the satisfaction of the Board, in "theory of account", "practical accounting", "auditing", "commercial law", and other related subjects.

From and after July 1, 1961, any person shall be eligible to take the examination given by the Board who is a citizen of the United States, or has declared his intention of becoming such citizen, and has resided for at least one year within the State of North Carolina, is twenty-one years of age or over and of good moral character, submits evidence satisfactory to the Board that he has completed two years in a college or university, or its equivalent, and shall have completed a course of study in accountancy in a school, college or university approved by the Board. Such applicant, in addition to passing satisfactorily the examinations given by the Board, shall have had at least two years' experience on the field staff of a certified public accountant or a North Carolina public accountant in public practice, or shall have served two or more years as an internal revenue agent or special agent under a District Director of Internal Revenue, or at least two years on the field staff of the North Carolina State Auditor under the direct supervision of a certified public accountant and shall have the endorsement of three certified public accountants as to his eligibility. A master's or more advanced degree in economics or busi-

ness administration from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such persons shall have had the required experience.

(7) To charge for each examination and certificate provided for in this chapter a fee not exceeding thirty-five dollars ($35.00). This fee shall be payable to the secretary-treasurer of the Board by the applicant at the time of filing application. If at any examination an applicant shall have received a passing grade in one subject, he shall have the privilege of one re-examination at any subsequent examination held within eighteen months from the date of his application upon payment of a re-examination fee not to exceed twenty-five dollars ($25.-00). In no case shall the examination fee be refunded, unless in the discretion of the Board the applicant shall be deemed ineligible for examination.

(8) To require the renewal of all certificates of qualification annually on the first day of July, and to charge and collect a fee not to exceed fifteen dollars ($15.00) for such renewal.

(14) All fees collected on behalf of the State Board of Accountancy, and all receipts of every kind and nature, as well as the compensation paid the members of the Board and the necessary expenses incurred by them in the performance of the duties imposed upon them by this chapter, shall be reported annually to the State Treasurer. Any surplus remaining in the hands of the Board over the amount of fifteen hundred dollars shall be paid to the State Treasurer at the time of submitting the report, and shall go to the credit of the general fund: Provided, that no expense incurred under this chapter shall be charged against the State.

(1959, c. 1188; 1961, c. 1010.)

Editor's Note.—

The 1959 amendment amended the former third paragraph of subdivision (5), deleted in 1961.

The 1961 amendment, effective July 1, 1961, substituted in subdivision (2) "American Institute of Certified Public Accountants" for "American Institute of Accountants." It struck out the second and third paragraphs of subdivision (5) and inserted in lieu thereof the present second paragraph. The amendment increased the amounts in subdivisions (7), (8) and (14). Only subdivisions (2), (5), (7), (8) and (14) are set out.

Chapter 93A.

Real Estate Brokers and Salesmen.

§ 93A-1. License required of real estate brokers and real estate salesmen.

Editor's Note.—For comment on this chapter, see 36 N. C. Law Rev. 44.

Constitutionality.—The real estate business affects a substantial public interest and may be regulated for the purpose of protecting and promoting the general welfare of the people. State v. Warren, 252 N. C. 690, 114 S. E. (2d) 660 (1960).

Cited in In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

§ 93A-2. Definitions and exceptions.

Cross Reference.—See note to § 93A-6.

§ 93A-6. Revocation of licenses; hearings; grounds; powers of Board.

Section Is Penal.—The portion of this section which empowers the Board to revoke the license of a real estate broker or salesman is penal in its nature and should

not be construed to include anything as a ground for revocation which is not embraced within its terms. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Adequate procedure for judicial review is provided by this section. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Licensee on Appeal Is Entitled to Trial de Novo. — The provision of subsection (b) of this section that on an appeal to the superior court from an adverse decision by the Board the accused licensee "shall be entitled to a trial de novo" means a trial de novo without any qualification and in all such appeals. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

It is not for the court to write into this section that the accused licensee shall be entitled to a trial de novo only when the Board has entered an order and made no record. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

The words of subsection (a) "any of the acts mentioned herein" must mean the acts of a real estate broker or real estate salesman for which a license is required in § 93A-1. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Subsection (a) (8) Applies Only to Misconduct Connected with Licensed Privilege.—The general language of subsection (a) (8) of this section must be construed as applying exclusively to activities in which the licensee has actually engaged in the pursuit of his licensed privilege as a real estate broker or salesman and not to some outside activity not connected in any way with the pursuit of his licensed privilege. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Sale of Broker's Own Notes Secured by Deeds of Trust.—A real estate broker, in selling his own notes secured by deeds of trust, did not act as a real estate broker as defined in § 93A-2, and any misconduct in performing such acts does not warrant the Board or the court on appeal to revoke his license on such ground. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Keeping Disorderly House.—Evidence offered by the Board to the effect that a real estate broker had pleaded guilty to a charge of operating a disorderly house, and had consented to the signing of a judgment against him padlocking for one year premises maintained and operated by him as a house of prostitution shows acts of a vile and decadent character committed by him, but such acts are not connected in any way with the pursuit of his licensed privilege as a real estate broker, and are not a ground for revocation of his license, and such evidence was correctly excluded as irrelevant and immaterial. In re Dillingham, 257 N. C. 684, 127 S. E. (2d) 584 (1962).

Chapter 95.

Department of Labor and Labor Regulations.

Article 1.

Department of Labor.

Article 6.

Separate Toilets for Sexes.

Article 11.

Minimum Wage Act.

Article 12.

Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.

Article 1.

Department of Labor.

§ 95-2. Election of Commissioner; term; salary; vacancy.—The Commissioner of Labor shall be elected by the people in the same manner as is provided for the election of the Secretary of State. His term of office shall be four years, and he shall receive a salary of eighteen thousand dollars ($18,000.00) per annum, payable in equal monthly installments. Any vacancy in the office shall be filled by the Governor, until the next general election. The office of the Department of Labor shall be kept in the city of Raleigh and shall be provided for as are other public offices of the State. (Rev., ss. 3909, 3910; 1919, c. 314, s. 4; C. S., s. 7310; 1931, c. 312, s. 2; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 349; 1943, c. 499, s. 2; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 5.)

Editor's Note.— The 1963 amendment, effective July 1, 1963, increased the salary from $12,000.00 to $18,000.00.

§ 95-3. Divisions of Department; Commissioner; administrative officers.—The Department of Labor shall consist of the following officers, divisions and sections:

A Commissioner of Labor.
A Division of Standards and Inspections.
A Division of Statistics.

Each division shall be in the charge of a chief administrative officer and shall be organized under such rules and regulations as the Commissioner of Labor and the head of the division concerned, with the approval of the Governor, shall prescribe and promulgate. The Commissioner of Labor, with the approval of the Governor, may make provision for one person to act as chief administrative officer of two or more divisions, when such is deemed advisable. The chief administrative officers of the several divisions shall be appointed by the Commissioner of Labor with the approval of the Governor. The Commissioner of Labor, with the approval of the Governor may combine or consolidate the activities of two or more of the divisions of the department, or provide for the setting up of other divisions when such action shall be deemed advisable for the more efficient and economical administration of the work and duties of the department. (1931, c. 277; c. 312, s. 4; 1933, c. 46; 1963, c. 313, s. 2.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section so as to eliminate all references to the Division of Workmen's Compensation or Industrial Commission.

§ 95-10: Repealed by Session Laws 1963, c. 313, s. 1, effective July 1, 1963.

§ 95-11. Division of Standards and Inspection.

Section Does Not Create Criterion for Negligence. — Neither the legislature, when it authorized the Division of Standards and Inspection of the Department of Labor to promulgate rules and regulations to protect the health, safety and general well-being of the working classes of the State, nor the Division when it wrote the rules, intended to create a criterion for negligence in civil damages suits. Swaney

v. Peden Steel Co., 259 N. C. 531, 131 S. E. (2d) 601 (1963).

Hence, Violation of Rule May Not Be Asserted as Contributory Negligence. — The violation of a rule issued by the Department of Labor under this section for the purpose of protecting construction employees from dangerous methods of work may not be asserted by a third person tort-feasor as contributory negligence of the employee so as to relieve itself of liability for injury to the employee proximately caused by its negligence. Swaney v. Peden Steel Co., 259 N. C. 531, 131 S. E. (2d) 601 (1963).

§ 95-13. Enforcement of rules and regulations.

Stated in Swaney v. Peden Steel Co., 259 N. C. 531, 131 S. E. (2d) 601 (1963).

Article 2.

Maximum Working Hours.

§ 95-17. Limitations of hours of employment; exceptions.—No employer shall employ a female person for more than forty-eight hours in any one week or nine hours in any one day, or on more than six days in any period of seven consecutive days.

No employer shall employ a male person for more than fifty-six hours in any one week, or more than twelve days in any period of fourteen consecutive days or more than ten hours in any one day, except that in case where two or more shifts of eight hours each or less per day are employed, any shift employee may be employed not to exceed double his regular shift hours in any one day whenever a fellow employee in like work is prevented from working because of illness or other cause: Provided, that any male person employed working in excess of fifty-five hours in any one week shall be paid time and a half at his regular rate of pay for such excess hours: Provided, in case of emergencies, repair crews, engineers, electricians, firemen, watchmen, office and supervisory employees and employees engaged in hereinafter defined continuous process operations and in work, the nature of which prevents second shift operations, may be employed for not more than sixty hours in any one week: Provided, also, that the ten hours per day maximum shall not apply to any employee when his employment is required for a longer period on account of an emergency due to breakdown, installation or alteration of equipment: Provided, also, that the ten hours per day maximum shall not apply to any employee who is employed as a motor vehicle mechanic on a commission, or who is employed partly on commission and partly on wage or salary basis: Provided, that boys over fourteen years of age delivering newspapers on fixed routes and working not more than twenty-four hours per week, and watchmen may be employed seven days per week: Provided, further, that for a period of one week's duration between Thanksgiving and Christmas and also for two periods of one week's duration each during the year for purpose of taking inventory, female persons over sixteen years of age in mercantile establishments may be employed not to exceed ten hours in any one day: Provided, further, that female persons engaged in the operation of seasonal industries in the process of conditioning and preserving perishable or semiperishable commodities may be employed for not more than ten hours in any one day and not more than fifty-five hours in any one week.

No provision in this article shall be deemed to authorize the employment of any minor in violation of the provisions of any law expressly regulating the hours of labor of minors or of any regulations made in pursuance of such laws.

Where the day is divided into two or more work periods for the same employee, the employer shall provide that all such periods shall be within twelve consecutive hours, except that in the case of employees of motion picture theatres, restaurants, dining rooms, and public eating places, such periods shall be within fourteen consecutive hours:

Provided, that the transportation of employees to and from work shall not constitute any part of the employees' work hours.

Nothing in this section or any other provisions of this article shall apply to the employment of persons in agricultural occupations, ice plants, cotton gins and cottonseed oil mills or in domestic service in private homes and boardinghouses, or to the work of persons over eighteen years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, motion picture theatres, seasonal hotels and club houses, commercial fishing or tobacco redrying plants, tobaccco warehouses, employers employing a total of not more than eight persons in each place of business, charitable institutions and hospitals: Provided further, that nothing in this section or in any other provision of this article shall apply to railroads, common carriers and public utilities subject to the jurisdiction of the Interstate Commerce Commission or the North Carolina Utilities Commission, and utilities operated by municipalities or any transportation agencies now regulated by the federal government: Provided, further, that the limitation on daily and weekly hours and the number of days in any period of fourteen consecutive days provided for in this section shall not apply to any male employee eighteen years of age and over whose employment is covered by or in compliance with the Fair Labor Standards Act of 1938 (Public No. 718; 75th Congress; Chapter 676-3rd Session), as amended or as same may be amended: Provided, nothing in this article shall apply to the State or to municipal corporations or their employees, or to employees in hotels.

When, by reason of a seasonal rush of business, any employer finds or believes it to be necessary that the employees of his or its manufacturing plant shall work for more than fifty-six hours per week, the employer may apply to the Commissioner of Labor of the State of North Carolina for permission to allow the employees of such establishment to work a greater number of hours than fifty-six for a definite length of time not exceeding sixty days; and the Commissioner after investigation, may, in his discretion, issue such permit on the condition that all such employees shall receive one and one-half times the usual compensation for all hours worked over fifty-six per week: Provided, this shall not apply to the hours of any female person or any person under the age of eighteen years: Provided further, employees in all laundries and dry cleaning establishments shall not be employed more than fifty-five hours in any one week: Provided further, nothing contained in this article shall be construed to limit the hours of employment of any outside salesmen on commission basis. Provided, that this article shall not apply to male clerks in mercantile establishments. Provided, that this article shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: One week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day. (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, c. 629; 1961, c. 1070.)

Editor's Note.—

The 1959 amendment inserted in line fifteen of the next to last paragraph the words "and the number of days in any period of fourteen consecutive days".

The 1961 amendment struck out the words "that from the eighteenth of December to and including the following twenty-fourth of December and," formerly appearing after the word "further" in line twenty-one of the second paragraph and inserted in lieu thereof the words "that for a period of one week's duration between Thanksgiving and Christmas and also."

Article 3.

Various Regulations.

§ 95-28. Working hours of employees in State institutions.—It shall be unlawful for any person or official or foreman or other person in authority

in Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, or any penal or correctional institution of the State of North Carolina, excepting the State prison and institutions under the control of the State Commission of Highways and Public Works, to require any employee to work for a greater number of hours than twelve (12) during any twenty-four (24) hour period, or not more than eighty-four (84) hours during any one week, or permit the same, during which period the said employee shall be permitted to take one continuous hour off duty; except in case of an emergency as determined by the superintendent, in which case the limitation of twelve (12) hours in any consecutive twenty-four (24) hours shall not apply. Nothing in this section shall be construed to affect the hours of doctors and superintendents in these hospitals. Any violation of this section shall be a misdemeanor, punishable within the discretion of the court. (1935, c. 136; 1959, c. 1028, ss. 1-3.)

Editor's Note.—The 1959 amendment changed the names of the State Hospital at Raleigh, the State Hospital at Morganton and the State Hospital at Goldsboro to Dorothea Dix Hospital, Broughton Hospital and Cherry Hospital, respectively.

G. S. 148-1 created the State Prison Department and transferred to it all duties and powers respecting the control and management of the State Prison System formerly vested in and imposed upon the State Highway and Public Works Commission.

Article 4A.

Voluntary Arbitration of Labor Disputes.

§ 95-36.6. Appointment of arbitrators.

This section is modified by § 95-36.9 (b), giving the courts and not the arbitrators power to decide whether or not a party has agreed to the arbitration of the controversy involved. Charlotte City Coach Lines, Inc. v. Brotherhood of Railroad Trainmen, 254 N. C. 60, 118 S. E. (2d) 37 (1961).

§ 95-36.9. Stay of proceedings.

Section 95-36.6 is modified by this section, giving the courts and not the arbitrators power to decide whether or not a party has agreed to the arbitration of the controversy involved. Charlotte City Coach Lines, Inc. v. Brotherhood of Railroad Trainmen, 254 N. C. 60, 118 S. E. (2d) 37 (1961).

Article 6.

Separate Toilets for Sexes.

§ 95-48. Separate toilets required.—In the interest of public health and in compliance with G. S. 130-160 and 143-138, adequate, well-lighted and ventilated toilet facilities plainly lettered and marked, for each sex shall be provided and maintained in a sanitary condition by all persons and corporations employing both males and females. Such toilet facilities shall be separated by full and substantial walls. (1913, c. 83, s. 1; C. S., s. 6559; 1963, c. 1114, s. 1.)

Editor's Note. — The 1963 amendment rewrote this section.

§ 95-49. Intruding on toilets unlawful. — It shall be unlawful, and punishable as provided in G. S. 95-50, for any employee to wilfully intrude or use any toilet not intended for his or her sex. (1913, c. 83, s. 4; C. S., s. 6560; 1963, c. 1114, s. 2.)

Editor's Note. — The 1963 amendment rewrote this section.

ARTICLE 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-64.1. Inspection of low pressure steam heating boilers, hot water heating and supply boilers and tanks.

Editor's Note.—The word "insured" in line three of subdivision (6) of subsection (b) of this section in the Replacement Volume should read "issued."

ARTICLE 10.

Declaration of Policy as to Labor Organizations.

§ 95-78. Declaration of public policy.

Editor's Note.—

For note on pre-emption and State injunctive enforcement of the "Right-to-Work" Law, see 36 N. C. Law Rev. 502.

By this article the legislature in emphatic language declared its public policy with respect to conditions incident to the right to employment. Douglas Aircraft Co. v. Local Union 379, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

Article Is in Force Except as Limited by National Labor Legislation.—

In accord with original. See Allen v. Southern Ry. Co., 249 N. C. 491, 107 S. E. (2d) 125 (1959).

Union Shop Agreement Valid under Federal Railway Labor Act.—

A union shop agreement authorized by the Union Shop Amendment of 1951 to the Federal Railway Labor Act is valid in instances governed by the federal act, notwithstanding that otherwise it would be void under the North Carolina "Right to Work" Act embodied in this and sections following. Allen v. Southern Ry. Co., 249 N. C. 491, 107 S. E. (2d) 125 (1959).

Applied in Brotherhood of Ry. & Steamship Clerks, etc. v. Allen, 373 U. S. 113, 83 S. Ct. 1158, 10 L. Ed. (2d) 235 (1963), reversing 256 N. C. 700, 124 S. E. (2d) 871 (1962).

Cited in Willard v. Huffman, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

§ 95-79. Certain agreements declared illegal.

Picketing for the purpose of forcing an employer to employ only union labor is for an unlawful purpose by virtue of this section. Douglas Aircraft Co. v. Local Union 379, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

Where orderly and peaceful picketing is for the unlawful purpose of forcing an employer to breach the Right to Work Law embraced in this section by employing only union labor, and also constitutes an unfair labor practice within the purview of the Federal Labor Management Relations Act, the North Carolina courts have no authority to issue a restraining order enjoining such picketing, since under the federal decisions the federal law exclusively pre-empts the field and removes the matter from the jurisdiction of the State courts. Douglas Aircraft Co. v. Local Union 379, 247 N. C. 620, 101 S. E. (2d) 800 (1958).

§ 95-81. Nonmembership as condition of employment prohibited.

Cross Reference.—See note to § 95-83.

Jurisdiction over Violation.—Where the National Labor Relations Board has declined jurisdiction because the amount of interstate commerce involved is less than the jurisdictional amount fixed by the Board, a state court has jurisdiction of an action for damages brought for an alleged violation of this section. Willard v. Huffman, 250 N. C. 396, 109 S. E. (2d) 233 (1959). See Keller v. Huffman Full Fashioned Mills, Inc., 251 N. C. 92, 110 S. E. (2d) 480 (1959).

§ 95-83. Recovery of damages by persons denied employment.

What Plaintiff Must Show. — In order for the plaintiff in the instant case to recover for damages allegedly sustained as a result of his discharge in violation of the provisions of § 95-81, the burden is on him to show by competent evidence, and by the greater weight thereof, that he was discharged solely by reason of his participation in the discussions with his fellow employees in connection with their proposed plan to join a labor union or that such participation therein was the "motivating" or "moving cause" for the discharge. Willard v. Huffman, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

What Jury Must Find.—Where there is

a conflict in the evidence as to the reason for discharge, in an action brought under the provisions of § 95-81 and the following sections, in order for a plaintiff to recover damages thereunder, the jury must find that the discharge resulted solely from the plaintiff's exercise of rights protected under this statute, or that the plaintiff's exercise of such rights was the motivating or moving cause for such discharge. Willard v. Huffman, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

Jurisdiction over Violation. — See same catchline under § 95-81.

§ 95-84. Application of article.

Cited in Willard v. Huffman, 247 N. C. 523, 101 S. E. (2d) 373 (1958).

ARTICLE 11.

Minimum Wage Act.

§ 95-85. Short title.—This article shall be known as the North Carolina Minimum Wage Act. (1959, c. 475.)

Editor's Note. — The act inserting this article is effective as of Jan. 1, 1960.

§ 95-86. Definition of terms.—As used in this article:

(1) "Commissioner" means the Commissioner of Labor;

(2) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(3) "Employee" includes any individual employed by an employer but shall not include:

a. Any person employed as a farm laborer or farm employee;

b. Any person employed in domestic service or in or about a private home or in or about a public or private nursing home for the aged and/or infirm, or in or about all hospitals of every kind and character both public and private, or in an eleemosynary institution primarily supported by public funds;

c. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact exist, or where the services rendered to such organizations are on a voluntary basis;

d. Newsboys, shoe-shine boys, caddies on golf courses, baby sitters, ushers, doormen, concession attendants and cashiers in theaters, pin boys in bowling alleys;

e. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

f. Any person employed on a part-time basis during the school year and who is a student at any recognized school or college while so employed;

g. Any person under the age of twenty-one (21) in the employ of his father or mother;

h. Any person receiving tips or gratuities as the principal part of his wage;

i. Any person confined in any penal, corrective, or mental institution of the State or any of its political subdivisions;

j. Employees of boys' and girls' summer camps;

k. Any person under the age of sixteen (16), regardless of by whom employed;

l. Those employed in the sea food or fishing industry on a part-time basis or who normally work and are paid for in the amount of work accomplished;

m. Any person who shall have reached his or her sixty-fifth (65) birthday.

(4) "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value: Provided, wages may include the reasonable cost to the employer, as determined by the Commissioner, of furnishing meals and for lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee. (1959, c. 475; 1961, c. 652.)

Editor's Note. — The 1961 amendment added at the end of paragraph e of subdivision (3) the words "taxicab drivers and operators."

§ **95-87. Minimum wages.**—Every employer shall pay to each of his employees wages at a rate not less than eighty-five cents (85¢) per hour. (1959, c. 475; 1963, c. 816.)

Editor's Note. — The 1963 amendment, effective Jan. 1, 1964, substituted "eighty-five cents (85¢)" for "seventy-five cents (75¢)."

§ **95-88. Certain establishment excluded.** — This article shall not apply to any establishment that does not have four or more persons employed at any one time: Provided, a husband, wife, son, daughter or parent of the employer shall not be enumerated in determining the number of persons employed. (1959, c. 475; 1961, c. 602; 1963, c. 1123.)

Editor's Note. — Prior to the 1961 amendment, effective Jan. 1, 1962, this article did not apply where the employer had five or less employees. The 1963 amendment added the proviso.

§ **95-89. Handicapped workers.**—The Commissioner may provide by regulation for the employment in any occupation at such wages lower than the minimum wage applicable under this article of persons whose earning capacity is impaired by physical or mental deficiency, as he may find appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship and to safeguard the applicable minimum wages under this article. (1959, c. 475.)

§ **95-90. Learners and apprentices.**—The Commissioner may provide by regulation, with the assent and approval of the State Apprenticeship Council, for employment in such occupation at wages lower than the minimum wage provided under this article for learners and apprentices as the Commissioner may find appropriate. (1959, c. 475.)

§ **95-91. Posting of law and orders.**—Every employer subject to the provisions of this article shall keep a summary of this article and any applicable wage orders and regulations posted in a conspicuous and accessible place in or about the premises of his place of business. (1959, c. 475.)

§ **95-92. Responsibility for enforcement.**—The provisions of this article shall be enforced by the Department of Labor under the Commissioner of Labor. (1959, c. 475.)

§ **95-93. Enforcement powers.**—The Commissioner of Labor or any authorized representative thereof shall have the authority to:

(1) Investigate and ascertain the wages of any person employed in any occupation in this State;

(2) Enter and inspect the places of business of any employer, subject to the provisions of this article for the purpose of inspecting the payroll records of such employer;

(3) Require from any employer subject to this article a full and correct statement in writing with respect to wages, hours, names, addresses of any of his employees;

(4) Administer rules and to require by subpoena the attendance of witnesses, the production of books, records and other evidence relative to any matter under investigation;

(5) Carry out the provisions of this chapter. (1959, c. 475.)

§ 95-94. **Penalties.** — Whoever knowingly and intentionally violates any provisions of this article, upon complaint lodged by the Commissioner, shall be punished by a fine of not less than ten dollars ($10.00) or more than fifty dollars ($50.00) or by imprisonment for not more than thirty (30) days in the discretion of the court, and whenever any person or business shall have been notified by the Commissioner or his authorized representative that he is violating such provision, each and every pay period in which said violation continues shall constitute a separate and indictable offense. (1959, c. 475.)

§ 95-95. **Employee's remedies.**—Any employer who violates the minimum wage requirements of this law shall be liable to the employee or employees affected in the amount of the unpaid minimum wages, plus interest at six per cent (6%) per annum upon such unpaid wages as may be due the plaintiff, said interest to be awarded from the date or dates said wages were due the employee or employees. Action to recover may be maintained in any court of competent jurisdiction. The court shall, in addition to any judgment awarded to the employee or employees, require defendant to pay court costs and reasonable attorney's fees incurred by the employee or employees. (1959, c. 475.)

§ 95-96. **Relation to other laws.**—Nothing in this article shall be construed so as to affect the State maximum hour law. (1959, c. 475.)

ARTICLE 12.

Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.

§ 95-97. **Employees of units of government prohibited from becoming members of trade unions or labor unions.**—No employee of the State of North Carolina, or of any agency, office, institution or instrumentality thereof, or any employee of a city, town, county, or other municipality or agency thereof, or any public employee or employees of an entity or instrumentality of government shall be, become, or remain a member of any trade union, labor union, or labor organization which is, or may become, a part of or affiliated in any way with any national or international labor union, federation, or organization, and which has as its purpose or one of its purposes, collective bargaining with any employer mentioned in this article with respect to grievances, labor disputes, wages or salary, rates of pay, hours of employment, or the conditions of work of such employees. Nor shall such an employee organize or aid, assist, or promote the organization of any such trade union, labor union, or labor organization, or affiliate with any such organization in any capacity whatsoever.

The terms "employee", "public employee" or "employees" whenever used in this section shall mean any regular and full-time employee engaged exclusively in law enforcement or fire protection activity. (1959, c. 742.)

§ 95-98. **Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.** — Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect. (1959, c. 742.)

§ **95-99. Penalty for violation of article.**—Any violation of the provisions of this article is hereby declared to be a misdemeanor, and upon conviction, plea of guilty or plea of nolo contendere shall be punishable in the discretion of the court. (1959, c. 742.)

§ **95-100. No provisions of article 10 of chapter 95 applicable to units of government or their employees.**—The provisions of article 10 of chapter 95 of the General Statutes shall not apply to the State of North Carolina or any agency, institution, or instrumentality thereof or the employees of same nor shall the provisions of article 10 of chapter 95 of the General Statutes apply to any public employees or any employees of any town, city, county or other municipality or the agencies or instrumentalities thereof, nor shall said article apply to employees of the State or any agencies, instrumentalities or institutions thereof or to any public employees whatsoever. (1959, c. 742.)

Article 13.

Payments to or for Benefit of Labor Organizations.

§ **95-101. Definition.**—As used in this article, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employee or employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (1963, c. 244.)

Editor's Note.—In the 1963 act adding this article, the sections were numbered 95-101.1 through 95-101.4. In accordance with the system of numbering in use in the General Statutes, they have been renumbered 95-101 through 95-104.

§ **95-102. Certain payments to and agreements to pay labor organizations unlawful.**—It shall be unlawful for any carrier or shipper of property or any association of such carriers or shippers to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways and any such agreement shall be void and unenforceable. (1963, c. 244.)

§ **95-103. Acceptance of such payments unlawful.**—It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described in § 95-102 above. (1963, c. 244.)

§ **95-104. Penalty.**—Any person, firm, corporation, association or partnership which or who agrees to pay, or does pay, or agrees to receive, or does receive, any payment described in this article shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100.00), nor more than one thousand dollars ($1,000.00) for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense. (1963, c. 244.)

Chapter 96.

Employment Security.

ARTICLE 1.

Employment Security Commission.

§ 96-1. Title.

Editor's Note.—

For explanation of the purposes and effects of the 1957 amendments to this chapter, see 36 N. C. Law Rev. 53.

One of the major purposes of the Employment Security Act was to provide a fund by systematic accumulations during periods of employment to be retained and use for the benefit of persons furloughed from their jobs through no fault of their own. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

Construction, etc.—

The "Employment Security Law" must be construed to promote and not to defeat the legislative policy as declared in this chapter, and the courts will not construe the chapter in such manner as to discourage parties from entering into contracts designed to lessen the hardships incident to termination of employment. In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-4. Administration.

Editor's Note.—

The word "its" in line six of paragraph d on page 266 of the Replacement Volume should read "it."

The references "§ 96-8 (5) and § 96-8 (6)" in line four of subsection (m) on page 267 of the Replacement Volume should now read "§ 96-8 (4) and § 96-8 (5)" by reason of the 1959 amendment of § 96-8.

Conclusiveness of Findings of Fact on Review.—

The Commission's findings of fact supported by competent evidence, are conclusive and the court is bound thereby. State v. Hennis Freight Lines, Inc., 248 N. C. 496, 103 S. E. (2d) 829 (1958).

§ 96-6. **Unemployment Insurance Fund.**—(a) Establishment and Control.—There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the Commission exclusively for the purposes of this chapter. This fund shall consist of:

(1) All contributions collected under this chapter, together with any interest earned upon any moneys in the fund;

(2) Any property or securities acquired through the use of moneys belonging to the fund;

(3) All earnings of such property or securities;

(4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;

(5) All moneys credited to this State's account in the unemployment trust fund pursuant to section 903 of Title IX of the Social Security Act, as amended (U. S. C. A. Title 42, sec. 1103 (a)).

All moneys in the fund shall be commingled and undivided.

(b) Accounts and Deposit.—The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the Commission and in accordance with such regulations as the Commission shall prescribe. He shall maintain within the fund three separate accounts:

(1) A clearing account,

(2) An unemployment trust fund account, and

(3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded immediately to the treasurer who shall immediately deposit them

in the clearing account. Refunds payable pursuant to § 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in § 143-3.2 under the requisition of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section nine hundred and four of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond, conditioned upon the faithful performance of those duties as custodian of the fund, in an amount fixed by the Commission and in a form prescribed by law or approved by the Attorney General. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals.—Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the Commission. The Commission shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the accounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon as provided in § 143-3.2 and requisitioned by the Commission for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the Budget Bureau or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be issued as provided in § 143-3.2 as requisitioned by the chairman of the Commission or a duly authorized agent of the Commission for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(1959, c. 362, s. 1; 1961, c. 454, ss. 1-3.)

Editor's Note.—

The 1959 amendment added subdivision (5) of subsection (a).

The 1961 amendment, effective July 1, 1961, changed subsection (b) by substituting "as provided in § 143-3.2" for the words "by the State Auditor" in the second sentence of the last paragraph. It also changed subsection (c) by making a similar substitution in line eight and rewriting the fifth sentence.

As the rest of the section was not affected by the amendments it is not set out.

Article 2.

Unemployment Insurance Division.

§ 96-8. Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(1) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(2) "Commission" means the Employment Security Commission established by this chapter.

(3) "Contributions" means the money payments to the State Unemployment Insurance Fund required by this chapter.

(4) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has, on or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter unless such agent or employee is an employer subject to the tax imposed by the Federal Unemployment Tax Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work: Provided, however, that nothing herein, on or after July first, one thousand nine hundred thirty-nine, shall be construed to apply to that part of the business of such "employers" as may come within the meaning of that term as it is defined in section one (a) of the Railroad Unemployment Insurance Act.

(5) "Employer" means:

a. With respect to any calendar year prior to 1956, any employing unit which was an employer during such year as previously defined in this chapter applicable to any such year. With respect to employment during the calendar year 1956, "employer" means any employing unit which in each of twenty different weeks within such calendar year (whether or not such weeks are or were consecutive) has, or had in employment, four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), and with respect to employment on and after January 1, 1957, "employer" means any employing unit which in each of twenty different weeks within the current or preceding calendar year (whether or not such weeks are or were consecutive) has, or had in employment, four or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week): Provided further, for the purpose of this subdivision, "week" means calendar week, and when a calendar week falls partly within each of two calendar years, such week shall be deemed to be within the calendar year within which such week ends: Provided further, that for purposes of this subdivision "employment" shall include services which would constitute "employment" but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the Commission pursuant to subsection (1) of § 96-4, and an agency charged with the administration of any other state or federal employment security law.

b. Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another, which at the time of such acquisition was an employer subject to this chapter; provided, such other would have been an employer under paragraph a of this subdivision, if such part had constituted its entire organization, trade, or business; provided further, that § 96-10, subsection (d), shall not be applicable to an individual or employing unit acquiring such part of the organization, trade or business. The provisions of § 96-11 (a), to the contrary notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this chapter. A successor by total acquisition under the provisions of this paragraph may be relieved from coverage hereunder by making written application with the Commission within sixty days from the date the Commission mails him a notification of his liability and provided the Commission finds the predecessor was an employer at the time of such acquisition only because such predecessor had failed to make application for termination of coverage as provided in § 96-11 of this chapter. A successor under the provisions of this paragraph who becomes an employer by virtue of having acquired a part of the organization, trade or business of the predecessor hereunder may be relieved from coverage upon making written application with the Commission within sixty days from the date the Commission mails him a notification of his liability and the Commission finds that the predecessor could have terminated by making the application under § 96-11 if the part acquired had constituted all of the predecessor's business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph a of this subdivision.

d. Any employing unit which, having become an employer under paragraphs a, b, or c, has not, under § 96-11, ceased to be an employer subject to this chapter; or

e. For the effective period of its election pursuant to § 96-11 (c) any other employing unit which has elected to become fully subject to this chapter.

f. Any employing unit not an employer by reason of any other paragraph of this subdivision, for which, within any calendar year, services in employment are or were performed with respect to which such employing unit is or was liable for any federal tax against which credit may or could have been taken for

contributions required to be paid into a State Unemployment Insurance Fund; provided, that such employer, notwithstanding the provisions of § 96-11, shall cease to be subject to the provisions of this chapter during any calendar year if the Commission finds that during such period the employer was not subject to the provisions of the Federal Unemployment Tax Act and any other provisions of this chapter.

g. Any employing unit with its principal place of business located outside of the State of North Carolina, which engages in business within the State of North Carolina, and which, during any period of twelve consecutive months, has in employment four or more individuals in as many as twenty different weeks shall be deemed to be an employer and subject to the other provisions of this chapter.

h. Any employing unit which maintains an operating office within this State from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled: Provided, the employing unit would be an employer by reason of any other paragraph of this subdivision.

i. Any employing unit which, after July 1, 1961, acquired a part of the organization, trade or business of another which if treated as a single unit with such part acquired would be an employer under paragraph a of this subdivision if such part acquired had constituted all of the organization, trade or business of the predecessor.

(6) a. "Employment" means service performed prior to January 1, 1949, which was employment as defined in this chapter prior to such date, and any service performed after December 31, 1948, including service in interstate commerce, except employment as defined in the Railroad Retirement Act and the Railroad Unemployment Insurance Act, performed for wage or under any contract of hire, written or oral, express or implied, in which the relationship of the individual performing such service and the employing unit for which such service is rendered is, as to such service, the legal relationship of employer and employee. Provided, however, the term "employee" includes an officer of a corporation, but such term does not include (i) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (ii) any individual (except an officer of a corporation) who is not an employee under such common-law rules. An employee who is on paid vacation or is on paid leave of absence due to illness or other reason shall be deemed to be in employment irrespective of the failure of such individual to perform services for the employing unit during such period.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this State if:

1. The service is localized in this State; or
2. The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or con-

trolled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

c. Services performed within this State but not covered under paragraph b of this subdivision shall be deemed to be employment subject to this chapter, if contributions are not required and paid with respect to such services under an employment security law of any other state or of the federal government.

d. Services not covered under paragraph b of this subdivision, and performed entirely without this State, with respect to no part of which contributions are required and paid under an employment security law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such service is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter, and services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to subsection (1) of § 96-4 shall be deemed to be employment during the effective period of such election.

e. Service shall be deemed to be localized within a state if

1. The service is performed entirely within such state; or
2. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the State; for example, is temporary or transitory in nature or consists of isolated transactions.

f. The term "employment" shall include:

1. Services covered by an election pursuant to § 96-11, subsection (c), of this chapter; and
2. Services covered by an election duly approved by the Commission in accordance with an arrangement pursuant to § 96-4, subsection (1), of this chapter during the effective period of such election.
3. Any service of whatever nature performed by an individual for an employing unit on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if such individual is employed on and in connection with such vessel when outside the United States: Provided, such service is performed on or in connection with the operations of an American vessel operating on navigable waters within or within and without the United States and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State: Provided further, that this subparagraph shall not be applicable to those services excluded in subdivision (6), paragraph g, subparagraph 6 of this section.
4. Any service of whatever nature performed after Decem-

ber 31, 1961, by an individual for an employing unit on or in connection with an American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the aircraft it touches at a port in the United States, if such individual is employed on and in connection with such aircraft when outside the United States; provided such service is performed on or in connection with the operations of an American aircraft and such operations are ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

g. The term "employment" shall not include:

1. Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;

2. Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States. From and after March 10, 1941, service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, that if this State shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in § 96-10 (e) with respect to contributions erroneously collected.

3. Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress: Provided, that the Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in § 96-4 (b) for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance under such act of Congress, acquired rights to benefits under this chapter;

4. Agricultural Labor.—For purposes of this chapter, the term "agricultural labor" includes all services performed: (i) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife; (ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (iii) in connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, sec. 3, 12 U. S. C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or (iiii) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

   As used in this subparagraph, the term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranchers, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

5. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

6. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if the individual is performing services on and in connection with such vessel or aircraft when outside the United States; or, service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic

forms of animal and vegetable life (including service performed by such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States).

7. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;
8. Service performed prior to January 1, 1962, in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; and employment shall not include after December 31, 1961, service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which is exempt from income tax under section 501 (a), Internal Revenue Code of 1954;
9. Service performed on and after March 10, 1941, by an individual for an employing unit or an employer as an insurance agent or as an insurance solicitor or as a securities salesman if all such service performed by such individual for such employing unit or employer is performed for remuneration solely by way of commission; and service performed on and after January 1, 1959, by an individual during any calendar quarter for an employing unit or an employer as an insurance agent or as an insurance solicitor, or as a securities salesman, if all such service performed during such calendar quarter by such individual for such employing unit or employer is performed for remuneration solely by way of commission;
10. From and after March 10, 1941, service performed in any calendar quarter by any officer, individual or committeeman of any building and loan association organized under the laws of this State, or any federal savings and loan association, where the remuneration for such service does not exceed forty-five dollars in any calendar quarter;
11. Service performed before January 1, 1962, in connection with the collection of dues or premiums for a fraternal benefit society, order, or association performed away from the home office, or its ritualistic service in connection with any such society, order or association;

12. Services performed in employment as a newsboy, selling or distributing newspapers or magazines on the street or from house to house.
13. Except as provided in paragraph a of subdivision (5) of this section, service covered by an election duly approved by the agency charged with the administration of any other state or federal employment security law in accordance with an arrangement pursuant to subsection (1) of § 96-4 during the effective period of such election.
14. Notwithstanding any of the other provisions of this subsection, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment insurance fund.
15. Casual labor not in the course of the employing unit's trade or business.
16. The term "employment" shall not include services performed in the employ of any nationally recognized veterans' organization chartered by the Congress of the United States.
17. Service performed after December 31, 1961, in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501 (a) of the Internal Revenue Code of 1954 (other than an organization described in section 401 (a) of said Internal Revenue Code of 1954) or under section 521 of the Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars ($50.00).
18. Service performed after December 31, 1961, in the employ of a school, college or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university.

(7) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices.

(8) "Fund" means the Unemployment Insurance Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(9) "State" includes, in addition to the states of the United States of America, Puerto Rico and the District of Columbia.

(10) "Total and partial unemployment."

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services.

b. An individual shall be deemed "partially unemployed" in any week in which, because of lack of work, he worked less than sixty per cent of the customary scheduled full-time hours of the industry or plant in which he is employed, and with respect to which the wages payable to him are less than his weekly benefit amount plus an amount equal to one-half of such weekly benefit amount figured to the nearest multiple of one dollar ($1.00). Provided, however, the Commission may find the customary scheduled full-time hours of any individual to be less or more than the customary scheduled full-time hours of

the industry or plant in which he is employed, if such individual customarily performs services in an occupation which requires that he customarily work a greater or smaller number of hours than the customary scheduled full-time hours of the industry or plant in which he is employed.

c. An individual shall be deemed "part totally unemployed" in any week in which his earnings from odd job or subsidiary work are less than his weekly benefit amount plus an amount equal to one-half of his weekly benefit amount figured to the nearest multiple of one dollar ($1.00).

d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

(11) "Employment Security Administration Fund" means the Employment Security Administration Fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(12) From and after March 10, 1941, "wages" means all remuneration for services from whatever source.

(13) a. From and after March 10, 1941, "wages" shall include commissions and bonuses and any sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent or arbitration for loss of pay by reason of discharge and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities shall be estimated and determined in accordance with rules prescribed by the Commission: Provided, if the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment benefits only shall be determined in such manner as may by authorized regulations be prescribed. Such regulations shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals: Provided further, that the term "wages" shall not include the amount of any payment with respect to services performed on and after January 1, 1953, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (i) retirement, or (ii) sickness or accident disability, or (iii) medical and hospitalization expenses in connection with sickness or accident disability, or (iiii) death: Provided, further, wages shall not include payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.

b. "Wages" shall not include any payment made to, or on behalf of, an employee or his beneficiary from or to a trust which qualifies under the conditions set forth in section 401 (a) (1) and (2) of the Internal Revenue Code of 1954 or under or to an

annuity plan which at the time of such payment meets the requirements of section 401 (a) (3), (4), (5) and (6) of such code and exempt from tax under section 501 (a) of such code at the time of such payment, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as beneficiary of the trust.

(14) "Week" means such period or periods of seven consecutive calendar days ending at midnight as the Commission may by regulations prescribe.

(15) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the Commission may by regulation prescribe.

(16) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment.

(17) a. "Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week with respect to which such individual first registers for work and files a valid claim for benefits, and after the termination of such benefit year the next benefit year shall be the next one-year period beginning with the first day of the first week with respect to which such individual registers for work and files a valid claim for benefits; a valid claim shall be deemed to have been filed if such individual, at the time the claim is filed, is unemployed and has been paid wages for employment amounting to at least the minimum of the qualifying base period wage as set forth in the applicable table in § 96-12: Provided, however, that any individual whose employment under this chapter prior to July first, one thousand nine hundred and thirty-nine, shall have been for an employer subject after July first, one thousand nine hundred and thirty-nine, to the Railroad Unemployment Insurance Act and some other employer subject to this chapter, such individual's benefit year, if established before July first, one thousand nine hundred and thirty-nine, shall terminate on that date and if again unemployed after July first, one thousand nine hundred and thirty-nine, he shall establish another benefit year after such date with respect to employment subject to this chapter.

b. As to claims filed on or after July 1, 1961, by individuals who do not have benefit years in progress, "benefit year" with respect to any such individual means the one-year period beginning with the first day of the first week with respect to which the individual first registers for work and files a valid claim for benefits. After the termination of such benefit year the next benefit year shall be the next one-year period beginning with the first day of the first week with respect to which such individual registers for work and files a valid claim. A valid claim shall be deemed to have been filed if such individual, at the time the claim is filed, is unemployed and has been paid wages in more than one calendar quarter of his base period amounting to at least the minimum of the qualifying base period wages as set forth in the applicable table in § 96-12 and when such individual has in his last established benefit year

exhausted his maximum benefit entitlement, he must also have met the provisions of § 96-12 (b) (3).

(18) For benefit years established on and after July 1, 1953, the term "base period" shall mean the first four of the last six completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in subdivision (17) of this section. For benefit years established prior to July 1, 1953, the term "base period" shall be the same as heretofore defined in this chapter immediately prior to this enactment.

(19) Wages payable to an individual with respect to covered employment performed prior to January first, one thousand nine hundred and forty-one, shall, for the purpose of § 96-12 and § 96-9, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

(20) The term "American vessel", as used in this chapter, means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is performing service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(21) The words "Employment Security Law" as used in this chapter mean any law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits. (Ex. Sess. 1936, c. 1, s. 19; 1937, c. 448, s. 5; 1939, c. 27, ss. 11-13; c. 52, ss. 6, 7; c. 141; 1941, cc. 108, 198; 1943, c. 377, ss. 31-34; c. 552, ss. 1, 2; 1945, c. 522, ss. 5-10; c. 531, ss. 1, 2; 1947, c. 326, ss. 7-12; c. 598, ss. 1, 5, 8; 1949, c. 424, ss. 3-8½; cc. 523, 863; 1951, c. 322, s. 1; c. 332, ss. 2, 3, 18; 1953, c. 401, ss. 1, 7-11; 1955, c. 385, ss. 3, 4; 1957, c. 1059, ss. 2-4; 1959, c. 362, ss. 2-6; 1961, c. 454, ss. 4-15.)

Editor's Note.—

The 1959 amendment deleted former subdivision (1) and renumbered former subdivisions (2) through (22) to appear as (1) through (21), and changed the word "eight" in paragraph g of subdivision (5) to read "four." The amendment also changed paragraphs g 4 and g 9 of subdivision (6) and rewrote paragraphs b and c of subdivision (10).

The 1961 amendment, effective July 1, 1961, changed subdivision (5) by rewriting the first part of paragraph a, by substituting the present last two sentences of paragraph b for the former last sentence, and by adding paragraph i. The amendment made several changes in subdivision (6). It added subparagraph 4 of paragraph f. It changed the section number of the Federal Internal Revenue Code cited in the proviso at the end of subparagraph 2 of paragraph g. It also made changes in subparagraphs 6, 8 and 11 and added subparagraphs 17 and 18 of paragraph g. It substituted "Puerto Rico" for "Alaska, Hawaii" in subdivision (9) and rewrote b and c of subdivision (10). It further redesignated subdivision (17) as subdivision (17) a and added paragraph b. The amendment added the provision as to American aircraft at the end of subdivision (20).

This section provides the qualifications for benefits under the Employment Security Law. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

Employee Is Entitled to Benefits If He Does Not Work and Is Not Paid for Services.—A laid-off employee is entitled to the insurance benefits under the State law if he is totally unemployed; that is, if he does not work, and is not paid and not due pay for services. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

One is not entitled to unemployment benefits merely because he meets the legislative definition of "totally unemployed." In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

Deferment of Benefits Until Exhaustion of Severance and Vacation Pay. — Discharged employees who are entitled under

a contract to severance and vacation pay are not entitled to unemployment benefits until the monies paid as severance and vacation pay have been exhausted by time elapsed at the employees' weekly wage rate. In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

The fact that the legislature not only amended the definition of "wages" in 1953, but added, in 1955, a disqualifying provision, is clear evidence of its intent to prevent the collection of unemployment benefits so long as the employee had vacation or severance pay payable to him. It is a clear declaration that the legislature did not intend that an employer should be required to provide greater compensation to an unemployed individual then to the same individual when at work. In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

Payments under Supplemental Unemployment Benefit Plan.—Under the wage and service test fixed by this section, payments to laid-off employees under a supplemental unemployment benefit plan do not constitute wages. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

Benefits received by a laid-off employee from a trust fund set up pursuant to a collective bargaining agreement should not be deducted from unemployment insurance benefits due such employee under the Employment Security Act. In re Shuler, 255 N. C. 559, 122 S. E. (2d) 393 (1961).

Driver of Truck Leased to Carrier Held Not Employee of Lessee.—Where an interstate carrier leased a motor vehicle for a trip under its franchise by agreement stipulating that lessor should furnish the equipment and pay the driver's salary and fully maintain and service the equipment, in consideration of a lump sum payment, the driver of such leased vehicle, whether he was the lessor-owner or an employee of the lessor-owner, was not an employee of the lessee within the meaning of this section. State v. Hennis Freight Lines, Inc., 248 N. C. 496, 103 S. E. (2d) 829 (1958).

§ 96-9. **Contributions.**—(a) Payment.—

(1) On and after January first, one thousand nine hundred and thirty-six, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter, with respect to wages for employment (as defined in § 96-8 (6)). Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided that, on and after July first, one thousand nine hundred and forty-one, contributions shall be paid for each calendar quarter with respect to wages paid in such calendar quarter for employment after December thirty-first, one thousand nine hundred and forty. Contributions shall become due on and shall be paid on or before the last day of the month following the close of the calendar quarter in which such wages are paid and such contributions shall be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the remuneration of individuals in his employ, provided, further, that if the Commission shall be advised by its duly authorized officers or agents that the collection of any contribution under any provision of this chapter will be jeopardized by delay, the Commission may, whether or not the time otherwise prescribed by law for making returns and paying such tax has expired, immediately assess such contributions (together with all interest and penalties, the assessment of which is provided for by law). Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Commission for the payment thereof. Upon failure or refusal to pay such contributions, penalties, and interest, it shall be lawful to make collection thereof as provided by § 96-10 and subsections thereunder and such collection shall be lawful without regard to the due date of contributions herein prescribed, provided, further, that nothing in this paragraph shall be

construed as permitting any refund of contributions heretofore paid under the law and regulations in effect at the time such contributions were paid.

(2) In the payment of any contributions a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) For the purposes of this section, the term "wages" shall not include that part of the remuneration which, after remuneration equal to $3,000 has become payable to an individual by an employer with respect to employment during the calendar year 1940, becomes payable to such individual by such employer with respect to employment during such calendar year, and which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during the calendar year 1941, and during any calendar year thereafter, is paid to such individual by such employer with respect to employment occurring during such calendar year but after December 31, 1940: Provided, that from and after December 31, 1946, for the purpose of this section, the term "wages" shall not include that part of remuneration in excess of three thousand dollars ($3,000.00) paid to an individual by an employer during any calendar year for employment, irrespective of the year in which such employment occurred.

From and after March 18, 1947, for the purposes of this section, "wages" shall not include, and no contributions shall be paid on that part of remuneration earned by an individual in this State, which, when added to wages previously earned by such individual in another state or states, exceeds the sum of three thousand dollars ($3,000.00), and the employer has paid contributions to such other state or states on the wages earned therein by such individual during the calendar year applicable. This provision shall be applicable only to wages earned by such individual in the employ of one and the same employer.

From and after January 1, 1953, for the purposes of this section, "wages" shall not include, and no contributions shall be paid on that part of remuneration earned by an individual in the employ of a successor employer, which when added to remuneration previously earned by such individual in the employ of the predecessor employer exceeds the sum of three thousand dollars ($3,000.00) in the calendar year in which the successor acquired the organization, trade or business of the predecessor as provided in § 96-8 (5) b; provided, however, such individual was an employee of the predecessor at the time of the acquisition of the business by the successor and was taken over by the successor as a part of the organization acquired; provided further that the predecessor employer has paid contributions on the earnings of such individual while in his employ during such year, and the account of the predecessor is transferred to the successor as provided in § 96-9 (c) (4) a.

(b) Rate of Contributions.—

(1) Each employer shall pay contributions with respect to employment during any calendar year prior to January 1, 1955, as required by this chapter prior to such January 1, 1955, and each employer shall pay contributions equal to two and seven-tenths (2.7) per cent of wages paid by him during the calendar year 1955 and each year thereafter with respect to employment occurring after December 31, 1954, which shall be deemed the standard rate of contributions payable by each employer except as provided herein.

(2) a. No employer's contribution rate shall be reduced below the standard rate for any calendar year unless and until his account has been

chargeable with benefits throughout the twelve consecutive calendar-month period ending July 31 immediately preceding the computation date and his credit reserve ratio meets the requirements of that schedule used in the computation.

b. The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance and has been chargeable with benefits as set forth in G. S. 96-9 (b) (2) a of this chapter. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the thirty-six calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all such past periods.

c. The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all his contributions paid and credited for all past periods together with all other lawful credits is less than the total benefits charged to his account for all such periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of such employer's account as of July 31 of each year by the total taxable payroll of such employer for the thirty-six calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.

(3) a. The applicable schedule of rates for a calendar year shall be determined by the fund ratio resulting when the total amount available for benefits in the unemployment insurance fund, as of the computation date, is divided by the total amount of the taxable payroll of all subject employers for the twelve-month period ending June 30 preceding such computation date. Schedule A, B, C, D, E, F, G, or H appearing on the line opposite such fund ratio in the table below shall be applicable in determining and assigning each eligible employer's contribution rate for the calendar year immediately following the computation date:

FUND RATIO SCHEDULES

When the Fund Ratio Is: As Much As	But Less Than	Applicable Schedule
——	4.5%	A
4.5%	5.5%	B
5.5%	6.5%	C
6.5%	7.5%	D
7.5%	8.5%	E
8.5%	9.5%	F
9.5%	10.5%	G
10.5% and in excess thereof		H

Variations from the standard rate of contributions shall be determined and assigned with respect to each calendar year, to employers whose accounts have a credit balance and who are eligible therefor according to each such employer's credit reserve ratio, and each such employer shall be assigned the contribution rate appearing in the applicable schedule A, B, C, D, E, F, G, or H on the line opposite his credit reserve ratio as set forth in the Experience Rating Formula below:

EXPERIENCE RATING FORMULA

When the Credit Reserve Ratio Is: As Much As	But Less Than	Schedules							
		A	B	C	D	E	F	G	H
	1.4%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
1.4%	1.6%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.5
1.6%	1.8%	2.7	2.7	2.7	2.7	2.7	2.7	2.5	2.3
1.8%	2.0%	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1
2.0%	2.2%	2.7	2.7	2.7	2.7	2.5	2.3	2.1	1.9
2.2%	2.4%	2.7	2.7	2.7	2.5	2.3	2.1	1.9	1.7
2.4%	2.6%	2.7	2.7	2.5	2.3	2.1	1.9	1.7	1.5
2.6%	2.8%	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.3
2.8%	3.0%	2.5	2.3	2.1	1.9	1.7	1.5	1.3	1.1
3.0%	3.2%	2.3	2.1	1.9	1.7	1.5	1.3	1.1	0.9
3.2%	3.4%	2.1	1.9	1.7	1.5	1.3	1.1	0.9	0.7
3.4%	3.6%	1.9	1.7	1.5	1.3	1.1	0.9	0.7	0.5
3.6%	3.8%	1.7	1.5	1.3	1.1	0.9	0.7	0.5	0.4
3.8%	4.0%	1.5	1.3	1.1	0.9	0.7	0.5	0.4	0.3
4.0%	4.2%	1.3	1.1	0.9	0.7	0.5	0.4	0.3	0.2
4.2%	4.4%	1.1	0.9	0.7	0.5	0.4	0.3	0.2	0.1
4.4% and in excess thereof		0.9	0.7	0.5	0.4	0.3	0.2	0.1	0.1

b. New rates shall be assigned to eligible employers effective January 1, 1955, and each January 1 thereafter, in accordance with the foregoing Fund Ratio Schedule and Experience Rating Formula.

c. Each employer whose account as of the computation date of any year shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

RATE SCHEDULE FOR OVERDRAWN ACCOUNTS

When the Debit Ratio Is: As Much As	But Less Than	Assigned Rate:
....	0.2%	2.8%
0.2%	0.4%	2.9%
0.4%	0.6%	3.0%
0.6%	0.8%	3.1%
0.8%	1.0%	3.2%
1.0%	1.2%	3.3%
1.2%	1.4%	3.4%
1.4%	1.6%	3.5%
1.6%	1.8%	3.6%
1.8% and over		3.7%

The above rates for employers with overdrawn accounts shall first be assigned with respect to contributions payable for the calendar year 1958.

d. The computation date for all contribution rates shall be August 1 of the calendar year preceding the calendar year with respect to which such rates are effective.

e. Any employer may at any time make a voluntary contribution, additional to the contributions required under this chapter, to the fund to be credited to his account, and such voluntary contributions when made shall for all intents and purposes be deemed "contributions required" as said term is used in G. S. 96-8 (8). Any voluntary contributions so made by an employer within thirty days after the date of mailing by the Commission, pursuant to G. S. 96-9 (c) (3) herein, of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to his account as of the previous July 31. Provided, however, any voluntary contribution made as provided herein after July 31 of any year shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G. S. 96-9 (b) (3) until the following July 31. The Commission in accepting a voluntary contribution shall not be bound by any condition stipulated in or made a part of such voluntary contribution by any employer.

f. If, within the calendar month in which the computation date occurs, the Commission finds that any employing unit has failed to file any report required in connection therewith or has filed a report which the Commission finds incorrect or insufficient, the Commission shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time and shall notify the employing unit thereof by registered mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of such notice, the Commission shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increases but not to reduction, on the basis of subsequently ascertained information.

(c) (1) The Commission shall maintain a separate account for each employer and shall transfer to such account such employer's reserve account

balance as of July 31, 1952, and shall credit his account with all the contributions which he has paid or is paid on his own behalf subsequent to July 31, 1952. On the computation date, beginning first with August 1, 1948, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. No provision in this section shall in any way be subject to or affected by any provisions of the Executive Budget Act, as amended. Nothing in this act shall be construed to grant any employer or individual in his service prior claims or rights to the amount paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Charging of benefit payments.—

a. Benefits paid shall be charged against the account of each base period employer on wages paid to an eligible individual in any quarter prior to April 1, 1959, in the base period as provided by this chapter prior to April 1, 1959. Benefits paid shall be charged against the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter subsequent to March 31, 1959, by each such employer bears to the total wages paid by all base period employers during the base period, except as provided in paragraph b of this subdivision. Benefits paid on and after August 1, 1952, shall be charged to employers' accounts upon the basis of benefits paid to claimants whose maximum total benefits have been exhausted or whose benefit years have expired during each twelve-months' period ending on the July 31, preceding the computation date.

b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages earned prior to the date of (i) the voluntary leaving of work by the claimant without good cause attributable to the employer, or (ii) the discharge of claimant for misconduct in connection with his work, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding the separation of the individual from work as are or may be required by the regulations of the Commission.

(3) As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each employer's account and shall furnish him with a statement of all charges and credits thereto. At the same time the Commission shall notify each

employer of his rate of contributions as determined for the succeeding calendar year pursuant to this section. Such determination shall become final unless the employer files an application for review or redetermination prior to May 1 following the effective date of such rates. The Commission may redetermine on its own motion within the same period of time.

(4) Transfer of account.—

a. Whenever any individual, group of individuals, or employing unit, who or which, in any manner, succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in § 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within sixty days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. This provision shall not be retroactive with respect to the transfer of a part of an account of the predecessor in those cases in which an employing unit succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in § 96-8, subdivision (5), paragraph b, and shall apply only when the transfer of such distinct and severable portion of the organization, trade, or business of another occurred after March 31, 1949.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this chapter prior to the date of acquisition of the business, his rate of contribution for the period from such date to the end of the then current contribution year shall be the same as his rate in effect on the date of such acquisition. If the successor was not an employer prior to the date of the acquisition of the business he shall be assigned a standard rate of contribution set forth in § 96-9 (b) (1) for the remainder of the year in which he acquired the business of the predecessor; however, if such successor makes application for the transfer of the account within sixty days after notification by the Commission of his right to do so and the account is transferred, he shall be assigned for the remainder of such year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, provided there was only one predecessor or if more than one and the predecessors had identical rates. In

the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard rate of contributions of two and seven-tenths per cent (2.7%) and shall continue to pay at such rate until he qualifies for a reduction, or is subject to an increase in rate under the conditions prescribed in § 96-9 (b) (2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

(5) In the event any employer subject to this chapter ceases to be such an employer, his account shall be closed and the same shall not be used in any future computation of such employer's rate nor shall any period prior to the effective date of the termination of such employer during which benefits were chargeable be considered in the application of § 96-9 (b) (2) of this chapter.

(d) In order that the Commission shall be kept informed at all times on the circumstances and conditions of unemployment within the State and as to whether the stability of the fund is being impaired under the operation and effect of the system provided in subsection (c) of this section, the actuarial study now in progress shall be continued and such other investigations and studies of a similar nature as the Commission may deem necessary shall be made. (Ex. Sess. 1936, c. 1, s. 7; 1939, c. 27, s. 6; 1941, c. 108, ss. 6, 8; c. 320; 1943, c. 377, ss. 11-14; 1945, c. 522, ss. 11-16; 1947, c. 326, ss. 13-15, 17; c. 881, s. 3; 1949, c. 424, ss. 9-13; c. 969; 1951, c. 322, s. 2; c. 332, ss. 4-7; 1953, c. 401, ss. 12-14; 1955, c. 385, ss. 5, 6; 1957, c. 1059, ss. 5-11; 1959, c. 362, ss. 7, 8.)

Editor's Note.—

The 1959 amendment changed subsection (b) by rewriting the first sentence of paragraph (f) of subdivision (3). It also rewrote paragraph a of subdivision (2) of subsection (c).

Cited in State v. Hennis Freight Lines, Inc., 248 N. C. 496, 103 S. E. (2d) 829 (1958); In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-10. Collection of contributions.

(c) Priorities under Legal Dissolution or Distributions.—In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of one thousand eight hundred and ninety-eight, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section sixty-four (a) of that act (U. S. C., Title II, section 104 (a)), as amended.

(1959, c. 362, s. 9.)

Editor's Note.—

The 1959 amendment substituted "(a)" for "(b)" in the last line of subsection (c). As only subsection (c) was affected by the amendment the rest of the section is not set out.

§ 96-11. Period, election, and termination of employer's coverage. —(a) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year except as otherwise provided in § 96-8 (5) b; provided, however, that on and after July first, one thousand nine hundred thirty-nine, this section shall not be construed to apply to any part of the business of an employer as may come within the terms of section one (a) of the Federal Railroad Unemployment Insurance Act.

(b) Except as otherwise provided in subsections (a), (c) and (d) of this section, an employing unit shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, if it files with the Commission prior to the first day of March of such year a written application for termination of coverage and the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed eight or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week); provided that effective January 1, 1957, except as otherwise provided in subsections (a), (c) and (d) of this section, an employing unit shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, if it files with the Commission prior to the first day of March of such year a written application for termination of coverage and the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). For the purpose of this subsection, the two or more employing units mentioned in paragraphs b or c of § 96-8, subdivision (5), of this chapter shall be treated as a single employment unit: Provided, however, that any employer whose liability covers a period of more than two years when first discovered by the Commission, upon filing a written application for termination of coverage within ninety days after notification of his liability by the Commission, may be terminated as an employer effective January 1 of any calendar year before the year 1957, if the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed eight or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). With respect to the calendar year 1957, such employer may be terminated as an employer effective January 1, and for any subsequent year if the Commission finds that there were no twenty different weeks within the preceding calendar year (whether or not such weeks are or were consecutive) within which said employing unit employed four or more individuals in employment (not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week). In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final; provided further this provision shall not apply in any case of willful attempt in any manner to defeat or evade the payment of contributions becoming due under this chapter.

(c) (1) An employing unit, not otherwise subject to this chapter, which files with the Commission its written election to become an employer subject hereto for not less than two calendar years shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such

first day of January, it has filed with the Commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the Commission a written election that all such services performed by individuals in its employ, in one or more distinct establishments or places of business, shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the Commission such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment, subject hereto as of January one of any calendar year subsequent to such two calendar years only if, prior to the first day of March following such first day of January, such employing unit has filed with the Commission a written notice to that effect.

(d) An employer who has not had any individuals in employment for a period of two consecutive calendar years shall cease to be an employer subject to this chapter. An employer who has not had any individuals in employment under conditions which would make such employer eligible for exemption from filing contribution and wage reports required under this chapter, or an employer who has been exempted from filing such reports may be terminated fom liability upon written application within ninety days after notification of the reactivation of his account. Such termination shall be effective January 1 of any calendar year only if the Commission finds there were no twenty different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed four or more individuals in employment (eight or more prior to January 1, 1956) not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final. (Ex. Sess. 1936, c. 1, s. 8; 1939, c. 52, ss. 2, 3; 1941, c. 108, s. 9; 1945, c. 522, ss. 21-23; 1949, c. 424, ss. 17, 18; c. 522; 1951, c. 332, s. 9; c. 1147; 1953, c. 401, s. 16; 1955, c. 385, s. 10; 1959, c. 362, ss. 10, 11; 1961, c. 454, s. 16.)

Editor's Note.—

The 1959 amendment rewrote the proviso following the word "unit" in line twenty-one of subsection (b). It also rewrote subsection (d).

The 1961 amendment, effective July 1, 1961, substituted "two" for "five" in line two of subsection (d) and also inserted the words "an employer" in said line.

§ 96-12. Benefits.—(a) Payment of Benefits.—Twenty-four months after the date when contributions first accrue under this chapter benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Commission may prescribe.

(b) (1) Each eligible individual whose benefit year begins on and after the first day of July, 1957, and prior to the first day of July, 1961, and who is totally unemployed during any week as defined by § 96-8 (10) a shall be paid benefits with respect to such week or weeks at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to employment:

Column I Wages Paid During Base Period	Column II Weekly Benefit Amount
Less than $500.00	Ineligible
$ 500.00 to $ 609.99	$11.00
610.00 719.99	12.00
720.00 829.99	13.00
830.00 949.99	14.00
950.00 1,069.99	15.00
1,070.00 1,189.99	16.00
1,190.00 1,309.99	17.00
1,310.00 1,429.99	18.00
1,430.00 1,549.99	19.00
1,550.00 1,669.99	20.00
1,670.00 1,789.99	21.00
1,790.00 1,909.99	22.00
1,910.00 2,029.99	23.00
2,030.00 2,149.99	24.00
2,150.00 2,269.99	25.00
2,270.00 2,389.99	26.00
2,390.00 2,509.99	27.00
2,510.00 2,629.99	28.00
2,630.00 2,749.99	29.00
2,750.00 2,869.99	30.00
2,870.00 2,999.99	31.00
3,000.00 and over	32.00

(2) Each eligible individual whose benefit year begins on and after the first day of July, 1961, and who is totally unemployed as defined by § 96-8 (10) a shall be paid benefits with respect to such week or weeks at the rate per week appearing in the following table in Column II opposite which in Column I appear the wages paid to such individual during his base period with respect to employment:

Column I Wages Paid During Base Period		Column II Weekly Benefit Amount
Less than $550.00		Ineligible
$ 550.00 to	$ 649.99	$12.00
650.00	749.99	13.00
750.00	849.99	14.00
850.00	949.99	15.00
950.00	1,059.99	16.00
1,060.00	1,169.99	17.00
1,170.00	1,279.99	18.00
1,280.00	1,389.99	19.00
1,390.00	1,499.99	20.00
1,500.00	1,619.99	21.00
1,620.00	1,739.99	22.00
1,740.00	1,859.99	23.00
1,860.00	1,979.99	24.00
1,980.00	2,099.99	25.00
2,100.00	2,239.99	26.00
2,240.00	2,379.99	27.00
2,380.00	2,529.99	28.00
2,530.00	2,679.99	29.00
2,680.00	2,839.99	30.00
2,840.00	2,999.99	31.00
3,000.00	3,199.99	32.00
3,200.00	3,399.99	33.00
3,400.00	3,599.99	34.00
3,600.00	and over	35.00

(3) Qualifying Wages for Exhaustees.—An individual who has exhausted his maximum benefit entitlement in his last previous benefit year who files a claim for benefits on or after July 1, 1961, shall not be entitled to benefits unless he has been paid qualifying wages required in § 96-12 (b) (2) and since the beginning date of his last established previous benefit year and before the date upon which he files his new benefit claim has been paid wages equal to at least ten times the weekly benefit amount of the new benefit year claim. Such wages must have been earned with an employer subject to the provisions of this chapter or some other state employment security law or in federal service as defined in Title XV of the Social Security Act.

(c) Partial Weekly Benefit. — Each eligible individual who is either partially unemployed or part totally unemployed (as defined in § 96-8 (10) b and c) in any week shall be paid with respect to such week a partial benefit. Such partial benefit shall be an amount figured to the nearest multiple of one dollar ($1.00) which is equal to the difference between his weekly benefit amount and that part of the remuneration payable to him with respect to such week which is in excess of a sum equal to one-half of his weekly benefit amount figured to the nearest multiple of one dollar ($1.00).

(d) Duration of Benefits.—The maximum amount of benefits payable to any eligible individual, whose benefit year begins on and after March 22, 1951, shall be twenty-six (26) times his weekly benefit amount during any benefit year, except as such benefits may be further extended by § 96-12 (e) of this chapter. The Commission shall establish and maintain individual wage record accounts for each individual who earns wages in covered employment, until such time as such wages would not be necessary for benefit purposes.

(e) Extension of Benefits.—

(1) Generally. — "Extended benefits" shall be paid under this chapter as hereinafter specified.

(2) Payment of Extended Benefits.—At any time when the "extended benefit ratio" for any three calendar weeks, in a consecutive four-calendar-week period, averages as much as nine per centum (9%), upon certification of such fact and recommendation of the Commission and authorization of the Governor of this State, "extended benefits" shall be paid under the provisions of this chapter.

Any "eligible exhaustee" shall be paid a "weekly benefit amount" pursuant to the provisions of this chapter for any week of total or partial unemployment beginning in the existing benefit year of such "eligible exhaustee" and which also begins within the "extended benefit period" subsequent to the "effective date of the extended benefit ratio." "Extended benefits" to any "eligible exhaustee" shall be limited to an amount not to exceed eight times his "weekly benefit amount." Such "eligible exhaustee" must have met the conditions of eligibility contained in § 96-13, General Statutes, and shall not be paid "extended benefits" during any period of disqualification imposed under § 96-14, General Statutes; provided, that such "eligible exhaustee" shall be subject to all the other provisions of chapter 96 of the General Statutes not inconsistent with the provisions of this chapter.

(3) Eligible Exhaustee. — "Eligible exhaustee" under this chapter means any individual who has an existing benefit year in progress as such is defined in General Statutes 96-8 (17) and who has exhausted all other benefit rights under the provisions of this chapter during an "extended benefit period" as defined in this chapter and who does not have any unemployment insurance benefit rights which may be exercised under the laws of any state or the federal government; provided, that any "eligible exhaustee" who has not received the maximum amount of "extended benefits" under this chapter in any specified "extended benefit period" within his existing benefit year shall, if otherwise eligible under these provisions, be paid such remaining "extended benefits" for weeks of unemployment beginning within his existing benefit year and which may begin during an ensuing "extended benefit period" after the "effective date of the extended benefit ratio" in such "extended benefit period."

(4) Extended Benefit Period.—"Extended benefit period" means the month in which the "effective date of the extended benefit ratio" becomes effective together with the three-calendar-month period immediately preceding such effective date and the three-calendar-month period immediately following the month in which such "extended benefit ratio" became effective, being a period of seven-consecutive-calendar months. An "extended benefit period," as herein provided, shall be established on each occasion upon which the "extended benefit ratio" becomes effective under the provisions of this chapter notwithstanding that at such time an "extended benefit period" may be in progress.

(5) Extended Benefit Ratio.—"Extended benefit ratio" is the quotient obtained by dividing the number of insured workers filing for unemployment insurance benefits by the number of all insured workers. It shall be computed by dividing the number of weeks claimed (for purposes of § 96-15 (a), General Statutes) in the current calendar week by the monthly average (as published in North Carolina Employment and Wages released by the Employment Security Commission of North Carolina) of individuals in insured employment under this chapter during the immediately preceding calendar year, if the ratio being

computed is for a calendar week beginning between August 1 and December 31, inclusive; or if the ratio is being computed for a week beginning between January 1 and July 31, inclusive, the next to the last calendar year average monthly insured employment shall be used.

(6) Effective Date of Extended Benefit Ratio.—"Effective date of extended benefit ratio" means the first day of the week immediately following any consecutive four-calendar-week period during which for any three calendar weeks therein, such ratio averages as much as nine per centum (9%).

(7) Extended Benefits. — "Extended benefits" means the money payments payable to "eligible exhaustees" under the provisions of this chapter and are an extension of and not in lieu of benefits otherwise provided by this chapter and are benefits as defined in § 96-8 (1), General Statutes, for all the purposes of this chapter not inconsistent with the provisions of this chapter.

(8) Weekly Benefit Amount.—The "weekly benefit amount" payable to an "eligible exhaustee" under this chapter shall be the same as his weekly benefit amount payable during his existing benefit year as provided in § 96-12, General Statutes.

(9) Seasonal Worker.—A seasonal worker who has exhausted nonseasonal benefits and who has met all the other requirements of an "eligible exhaustee," except that he has future benefit rights not yet available which must be exercised by such worker during a future seasonal period under the provisions of § 96-16, General Statutes, shall be considered as having exhausted all benefit rights under the provisions of this chapter until such time as such future benefit rights become available to him; and any extended benefits so paid shall be treated as other benefit payments under this chapter, notwithstanding the provisions of § 96-16, General Statutes. (Ex. Sess. 1936, c. 1, s. 3; 1937, c. 448, s. 1; 1939, c. 27, ss. 1-3, 14; c. 141; 1941, c. 108, s. 1; c. 276; 1943, c. 377, ss. 1-4; 1945, c. 522, ss. 24-26; 1947, c. 326, s. 21; 1949, c. 424, ss. 19-21; 1951, c. 332, ss. 10-12; 1953, c. 401, ss. 17, 18; 1957, c. 1059, ss. 12, 13; c. 1339; 1959, c. 362, ss. 12-15; 1961, c. 454, ss. 17, 18.)

Editor's Note.—

The 1959 amendment deleted former subdivision (1) of subsection (b), rewrote subsection (c), added the exception clause to the first sentence of subsection (d), and added subsection (e).

The 1961 amendment, effective July 1, 1961, rewrote subsections (b) and (c).

Cited in re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-13. Benefit eligibility conditions.—An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that—

(1) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe;

(2) He has made a claim for benefits in accordance with the provisions of § 96-15 (a);

(3) He is able to work, and is available for work: Provided that no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment, shall during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, that no individual separated from employment after July 1,

1961, shall be considered able and available for work who has been separated from employment due to pregnancy from the date of such separation until the birth of such individual's child, and no individual shall be considered able and available for work, regardless of the cause of such individual's separation from employment, for any week during the three-month period immediately before the expected birth of a child to such individual and for any week during the three-month period immediately following the birth of a child to such individual; however, no individual shall be denied benefits by reason of this proviso in the event of the death of such child, if such individual is otherwise eligible: Provided further, however, that effective January 1, 1949, no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll week basis as established by the employment unit. A week of unemployment due to a vacation as provided herein means any payroll week within which as much as sixty per cent of the full time working hours consist of a vacation period. For the purpose of this subsection, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. (Ex. Sess. 1936, c. 1, s. 4; 1939, c. 27, ss. 4, 5; c. 141; 1941, c. 108, s. 2; 1943, c. 377, s. 5; 1945, c. 522, ss. 27-28; 1947, c. 326, s. 22; 1949, c. 424, s. 22; 1951, c. 332, s. 13; 1961, c. 454, s. 19.)

Editor's Note.—

The 1961 amendment, effective July 1, 1961, rewrote the third proviso in subdivision (3).

For note on availability for suitable work, see 34 N. C. Law Rev. 591.

Unemployment Due to Vacation.—Where an employer, in addition to one week of paid vacation provided for in the contract, shuts down its plant for an additional week of vacation during the Christmas period, its employees are not entitled to unemployment compensation for the additional week under this section. In re Southern, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

The language of this section, when read and understood in the light of its history, demonstrates that the time for vacation was, if not fixed by agreement of the parties, to be determined by the employer. The employer and its employees may by contract fix the date or dates for the vacation. Vacation may be one two-week period or two one-week periods. The statute does not prescribe; it merely limits the total vacation period for which an employee is eligible for compensation to a total of two weeks. In re Southern, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

Stated in Textile Workers Union of America v. Cone Mills Corp., 268 F. (2d) 920 (1959).

Cited in Textile Workers Union of America v. Cone Mills Corp., 188 F. Supp. 728 (1960); In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-14. Disqualification for benefits.

(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to

be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(1961, c. 454, s. 20.)

Editor's Note.—

The 1961 amendment, effective July 1, 1961, rewrote subdivision (4). As only subdivision (4) was changed the rest of the section is not set out.

For note on availability for suitable work, see 34 N. C. Law Rev. 591.

In passing the 1961 amendment to subdivision (4) the General Assembly acted within its constitutional powers. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

The effect of the 1961 amendment was to eliminate from subdivision (4) the means therein provided by which an employee might escape disqualification. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

New subdivision (4) extends the disqualification to workers at a factory, establishment, or other premise which supplies necessary materials or services to the plant where the claimants were last employed. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

The disqualification contained in the 1961 amendment to subdivision (4) involves a question of degree and not of principle. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

Quoted in In re Tyson, 253 N. C. 662, 117 S. E. (2d) 854 (1961).

§ 96-15. Claims for benefits.

(h) Appeal to Courts.—Any decision of the Commission, in the absence of an appeal therefrom as herein provided, shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has filed notice of appeal with the Commission within such ten-day period and exhausted his remedies before the Commission as provided by this chapter. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who has been designated by it for that purpose.

(i) Appeal Proceedings.—The decision of the Commission shall be final, subject to appeal as herein provided. Within ten days after the decision of the Commission has become final, any party aggrieved thereby who has filed notice of appeal within the ten-day period as provided by § 96-15 (h) may appeal to the superior court of the county of his residence. In case of such appeal, the court shall have power to make party-defendant any other party which it may deem necessary or proper to a just and fair determination of the case. In every case in which appeal is demanded, the appealing party shall file a statement with the Commission within the time allowed for appeal, in which shall be plainly stated the grounds upon which a review is sought and the particulars in which it is claimed the Commission is in error with respect to its decision. The Commission shall make a return to the notice of appeal, which shall consist of all documents and papers necessary to an understanding of the appeal, and a transcript of all testimony taken in the matter, together with its findings of fact and decision thereon, which shall be certified and filed with the superior court to which appeal is taken within thirty days of said notice of appeal. The Commission may also, in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section the findings of the Commission as to the facts, if there is evidence to support it, and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner, and shall be given precedence over all civil cases, except cases arising under the Workmen's Compensation Law of this State. An appeal may be taken from the decision of the superior court, as provided in civil cases. The Commission shall have the right of appeal to the Supreme Court from a decision or judgment of the superior court and for such purpose shall be deemed to be an aggrieved party. No bond shall be

required upon such appeal. Upon the final determination of the case or proceeding the Commission shall enter an order in accordance with such determination. Such an appeal shall not act as a supersedeas or stay of any judgment, order, or decision of the court below, or of the Commission unless the Commission or the court shall so order as to the decision rendered by it. (Ex. Sess. 1936, c. 1, s. 6; 1937, c. 150; c. 448, s. 4; 1941, c. 108, s. 5; 1943, c. 377, ss. 9, 10; 1945, c. 522, ss. 30-32; 1947, c. 326, s. 23; 1951, c. 332, s. 15; 1953, c. 401, s. 19; 1959, c. 362, ss. 16, 17; 1961, c. 454, s. 21.)

Editor's Note.—

The 1959 amendment inserted in the first sentence of subsection (h) the words "filed notice of appeal with the Commission within such ten-day period and." The amendment also inserted beginning in line three of subsection (i) the words "who has filed notice of appeal within the ten-day period as provided by § 96-15 (h)."

The 1961 amendment, effective July 1, 1961, inserted the fourth sentence from the end of subsection (i).

Only the subsections affected by the amendments are set out.

Conclusiveness of Findings of Fact on Appeal.—

Findings, supported by competent evidence, are conclusive on appeal. In re Abernathy, 259 N. C. 190, 130 S. E. (2d) 292 (1963).

The legislature in its discretion has made the findings of fact by the Commission conclusive when supported by any evidence. The validity of this section has been consistently recognized and effect given thereto. In re Southern, 247 N. C. 544, 101 S. E. (2d) 327 (1958).

§ 96-16. Seasonal pursuits.

(g) (1) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in § 96-9 (c) (2) of this chapter, against the account of his base period employer or employers who paid him such seasonal wages, and for the purpose of this paragraph such seasonal wages shall be deemed to constitute all of his base period wages.

(2) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in § 96-9 (c) (2) of this chapter, against the account of his base period employer or employers who paid him such nonseasonal wages, and for the purpose of this paragraph such nonseasonal wages shall be deemed to constitute all of his base period wages.

(1959, c. 362, s. 18.)

Editor's Note.—

The 1959 amendment struck out the word "reserve" before the word "account" in line three of subdivisions (1) and (2) of subsection (g). As only subsection (g) was affected by the amendment the rest of the section is not set out.

The reference to § 96-8 (6) b in subsection (a) in the original should read § 96-8 (5) b.

§ 96-18. Penalties.

(f) Any individual who makes a voluntary confession of guilt or is convicted in a court of competent jurisdiction of larceny or embezzlement in connection with his employment shall not be entitled to receive any benefits based on the wages earned by such individual prior to and including the quarter in which such act occurred; provided, the provisions of this subsection shall not be effective as to any benefits accrued or paid under any claim filed by such individual prior to the date this act occurred.

(g) Any individual who has received any sum as benefits to which he was not entitled, such sum having been paid to him as the result of error on the part of any representative of the Commission, shall be liable to have such sum deducted from any future benefits payable to him under this chapter, or shall be liable to repay to the Commission for the Unemployment Insurance Fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in § 96-10 (b) for the collection of past due contributions; provided, this "chapter" and "Unemployment Insurance Fund" shall also

be deemed to mean the Employment Security Law and the Unemployment Insurance Fund of any other state or the federal government, or a foreign government for the purposes of this subsection, when an interstate claim is involved. (Ex. Sess. 1936, c. 1, s. 16; 1943, c. 319; c. 377, ss. 29, 30; 1945, c. 552, s. 34; 1949, c. 424, s. 26; 1951, c. 332, s. 16; 1953, c. 401, ss. 1, 22; 1955, c. 385, s. 9; 1959, c. 362, ss. 19, 20.)

Editor's Note.—

The 1959 amendment rewrote subsection (f) and added subsection (g). As the rest of the section was not affected by the amendment only subsections (f) and (g) are set out.

Chapter 97.

Workmen's Compensation Act.

Article 1.

Workmen's Compensation Act.

ARTICLE 1.

Workmen's Compensation Act.

§ 97-1. Official title.

Editor's Note.—For case law survey on workmen's compensation, see 41 N. C. Law Rev. 409.

Purpose of Act.—

One of the purposes of the Workmen's Compensation Act is to relieve against hardship rather than to afford full compensation for injury. The fixing of maximum and minimum awards in industry is a compromise. Kellams v. Carolina Metal Products, Inc., 248 N. C. 199, 102 S. E. (2d) 841 (1958).

The Workmen's Compensation Act is primarily for the protection and benefit of the employee, and he is entitled to know with certainty when his right of action accrues. Hartsell v. Thermoid Co., 249 N. C. 527, 107 S. E. (2d) 115 (1959).

Construction.—

In accord with 3rd paragraph in original. See Hartley v. North Carolina Prison Dept., 258 N. C. 287, 128 S. E. (2d) 598 (1962).

In accord with 4th paragraph in original. See Kellams v. Carolina Metal Products, Inc., 248 N. C. 199, 102 S. E. (2d) 841 (1958).

The Compensation Act requires that it be liberally construed to effectuate the objects for which it was passed to provide compensation for workers injured in industrial accidents. Keller v. Electric Wiring Co., Inc., 259 N. C. 222, 130 S. E. (2d) 342 (1963).

The Industrial Commission has exclusive jurisdiction, etc. — Ordinarily, when the pleadings in a common-law tort action disclose that the parties are subject to and bound by the provisions of the North Carolina Workmen's Compensation Act with respect to the injury involved, dismissal is proper for the Industrial Commission has exclusive jurisdiction in such cases. Neal v. Clary, 259 N. C. 163, 130 S. E. (2d) 39 (1963).

§ 97-2. Definitions.

(2) Employee.—The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, except only such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, except such as are elected by the people: Provided, that the governing body of any municipal corporation or political subdivision may, in its discretion, bring officers elected by the people within the coverage of this article by adopting an appropriate resolution, and during the time such resolution is in effect any such elected officer shall be deemed to be an "employee" of such municipal corporation or political subdivision under this article. The term "employee" shall include members of the North Carolina National Guard, except when called into the service of the United States, and members of the North Carolina State Guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full time basis or a part time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, that the third and fourth sentences herein shall not apply to Alleghany, Avery, Bladen, Carteret, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga and Wilkes counties: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipalty, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a charitable, religious, educational or other nonprofit corporation, shall be an employee of such corporation under this article.

Any such executive officer of a charitable, religious, educational, or

other nonprofit corporation may, notwithstanding any other provision of this article, be brought within the coverage of its insurance contract by any such corporation by specifically including such executive officer in such contract of insurance and the election to bring such executive officer within the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus brought within the coverage of the insurance contract shall be employees of such corporation under this article.

A county agricultural extension service employee holding an appointment as a member of the staff of the United States Department of Agriculture shall not be an employee of the county under this article.

(3) Employer.—The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person. The board of commissioners of each county of the State, for the purposes of this law, shall be considered as "employer" of all deputy sheriffs serving within such county, or persons serving or performing the duties of a deputy sheriff, whether such persons are appointed by the sheriff or by the board of commissioners and whether serving on a fee basis or salary basis. Each county is authorized to insure its compensation liability for deputy sheriffs to the same extent it is authorized to insure other compensation liability for employees thereof: Provided, that the last two sentences herein shall not apply to Alleghany, Avery, Bladen, Carteret, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga and Wilkes counties.

(1959, c. 289; 1961, cc. 231, 235.)

I. IN GENERAL.

Editor's Note.—

The 1959 amendment rewrote the latter part of the first sentence of subdivision (2).

The first 1961 amendment deleted "Caswell" from the list of counties appearing near the end of the first paragraph of subdivision (2). It also deleted "Caswell" from the proviso at the end of subdivision (3).

The second 1961 amendment added the last paragraph of subdivision (2).

Only the subdivisions affected by the amendments are set out.

Quoted in Wesley v. Lea, 252 N. C. 540, 114 S. E. (2d) 350 (1960); Jackson v. Bobbitt, 253 N. C. 670, 117 S. E. (2d) 806 (1961).

Stated in Evans v. Asheville Citizens Times Co., 246 N. C. 669, 100 S. E. (2d) 75 (1957).

Cited in Shealy v. Associated Transport, Inc., 252 N. C. 738 114 S. E. (2d) 702 (1960); Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

II. EMPLOYMENT; EMPLOYEE; EMPLOYER.

A. Employment.

Acts Constituting Acceptance of Offer of Employment. — Under the circumstances, the act of an employee in reporting to the union office in this State, accepting a referral slip, and starting upon the trip to the job, constituted an acceptance of an offer of employment, so that the contract of employment was made and completed in this State. Warren v. Dixon & Christopher Co., 252 N. C. 534, 114 S. E. (2d) 250 (1960).

B. Employee.

3. Employees and Independent Contractors.

Question of Law.—

Whether the facts found by the Commission are supported by competent evidence and whether the facts found by the Commission support the legal conclusion that the injured party was an employee are reviewable by the court as questions of law. Pearson v. Peerless Flooring Co., 247 N. C. 434, 101 S. E. (2d) 301 (1958).

Mechanic Supervising Installation under Contract as Employee.—Where findings included fact that the seller of materials for construction of dry kilns recommended upon purchaser's request an expert mechanic to supervise their installation under contractual agreement that such mechanic should be considered an employee of the purchaser and mechanic was merely

supervising installation of the kilns because purchaser had no foreman with sufficient experience and skill to supervise the installation in accordance with the plans and specifications furnished by the seller, such findings supported legal conclusion that the mechanic was an employee of the purchaser rather than an independent contractor. Pearson v. Peerless Flooring Co., 247 N. C. 434, 101 S. E. (2d) 301 (1958).

4. State and Municipal Employees.

A prisoner is not an employee as defined by this section. Lawson v. North Carolina State Highway & Public Works Comm., 248 N. C. 276, 103 S. E. (2d) 366 (1958). See § 97-13 (c).

IV. INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

A. In General.

A compensable death is one which, etc.—

Under the Workmen's Compensation Act a compensable death is one which results to an employee from an injury by accident arising out of and in the course of his employment. Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

Exception Is Made in Case of Death of One Receiving Compensation for Silicosis. —The clear intent of § 97-61.6 to provide compensation for death occurring within 350 weeks from the date of last exposure to silicosis if the employee was at the time of death receiving compensation for disablement due to silicosis, even though the death does not result from silicosis, must be given effect notwithstanding subdivisions (6) and (10) of this section and § 97-52, since the specific provisions relating to silicosis, which were enacted because of the peculiar course of the disease, must be construed as an exception to the general tenor of the Compensation Act to provide compensation for death only if it results from an accident arising out of and in the course of the employment. Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

Death by suicide is compensable if a work-connected injury causes insanity which in turn induces the suicide. Painter v. Mead Corp., 258 N. C. 741, 129 S. E. (2d) 482 (1963).

When Industrial Commission's Findings Conclusive.—

Whether an accident arises out of the employment is a mixed question of fact and law, and the finding of the Industrial Commission is conclusive if supported by any competent evidence; otherwise, not. Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

B. Accident.

Accident and injury are considered separate. Ordinarily, the accident must precede the injury. Harding v. Thomas & Howard Co., 256 N. C. 427, 124 S. E. (2d) 109 (1962).

But there is authority indicating that injury by accident and accidental injury are synonymous terms. If so, the injury may be accidental without any requirement that an accident must precede and cause it. Keller v. Electric Wiring Co., Inc., 259 N. C. 222, 130 S. E. (2d) 342 (1963).

"Accident" Defined.—

In accord with 1st paragraph in original. See Harding v. Thomas & Howard Co., 256 N. C. 427, 124 S. E. (2d) 109 (1962).

Accident involves the interruption of the work routine and the introduction thereby of unusual conditions likely to result in unexpected consequences. Harding v. Thomas & Howard Co., 256 N. C. 427, 124 S. E. (2d) 109 (1962).

Death from injury by accident, etc.—

In accord with original. See Harding v. Thomas & Howard Co., 256 N. C. 427, 124 S. E. (2d) 109 (1962).

Ordinarily a death from heart disease is not an injury by accident arising out of and in the course of the employment, nor an occupational disease, so as to be compensable. Bellamy v. Morace Stevedoring Co., 258 N. C. 327, 128 S. E. (2d) 395 (1962).

Rupture of Intervertebral Disc.—

To sustain an award of compensation in ruptured or slipped disc cases the injury to be classed as arising by accident must involve more than merely carrying on the usual and customary duties in the usual way. Harding v. Thomas & Howard Co., 256 N. C. 427, 124 S. E. (2d) 109 (1962).

Evidence that while digging a ditch 12 inches wide by 14 inches deep, claimant came upon a rock some 24 inches long and 12 inches wide, weighing 50 to 100 pounds, that claimant dug around the rock, bent down to pick it up, and, as he twisted to heave it out of the ditch felt a catch in his back together with expert testimony that the rupture of claimant's spinal disc was caused by the lifting episode and that lifting from such a twisted and cramped position multiplied the intensity of the stress upon the vertebrae, was sufficient to sustain the Commission's findings that the injury resulted from an accident arising

out of and in the course of the employment. Keller v. Electric Wiring Co., Inc., 259 N. C. 222, 130 S. E. (2d) 342 (1963).

C. Arising Out of and in the Course of Employment.

1. In General.

Editor's Note.—

For note on acts done in furtherance of employer's good will as arising out of and in the course of employment, see 33 N. C. Law Rev. 637.

This chapter does not contemplate compensation for every injury, etc.—

In the citation of the case appearing under this catchline in the original the name "Byran" should be "Bryan."—Ed. Note.

In accord with original. See Pope v. Goodson, 249 N. C. 690, 107 S. E. (2d) 524 (1959).

"Out of" and "in the Course of" Distinguished.—

In accord with 1st paragraph in original. See Hardy v. Small, 246 N. C. 581, 99 S. E. (2d) 862 (1957); Sandy v. Stackhouse, Inc., 258 N. C. 194, 128 S. E. (2d) 218 (1962); Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962); Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

"Arising Out of" Defined.—

For an accident to arise out of the employment there must be some causal connection between the injury and the employment. When an injury cannot fairly be traced to the employment as a contributing proximate cause, or if it comes from a hazard to which the employee would have been equally exposed apart from the employment, or from the hazard common to others, it does not arise out of the employment. In such a situation the fact that the injury occurred on the employer's premises is immaterial. Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

Rule of Causal Relation.—

There must be some causal relation between the employment and the injury. Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962).

Injury Must Be Fairly Traceable to Employment as Contributing Proximate Cause.—

In accord with 1st paragraph in original. See Hardy v. Small, 246 N. C. 581, 99 S. E. (2d) 862 (1957); Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962).

Mixed Question of Law and Fact.— Whether an injury by accident arises out of and in the course of the employment is a mixed question of law and of fact. Hardy v. Small, 246 N. C. 581, 99 S. E. (2d) 862 (1957).

Whether an accident arose out of the employment is a mixed question of law and fact. Sandy v. Stackhouse, Inc., 258 N. C. 194, 128 S. E. (2d) 218 (1962); Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962).

Ordinarily, when an employee is off duty the relationship of master and servant is suspended; therefore, there is no causal relation between the employment and an accident which happens during such time. Sandy v. Stackhouse, Inc., 258 N. C. 194, 128 S. E. (2d) 218 (1962).

2. Origin and Cause of Accident.

a. Risks Incident to the Employment Generally.

No Recovery for Injury Not Arising, etc.—

Where an employee, while about his work, suffers an injury in the ordinary course of the employment, the cause of which is unexplained but which is a natural and probable result of a risk thereof, and the Industrial Commission finds from all the attendant facts and circumstances that the injury arose out of the employment, and award will be sustained. If, however, the cause is known and is independent of, unrelated to, and apart from the employment—the result of a hazard to which others are equally exposed—compensation will not be allowed. Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

The causative danger must be peculiar to the work and not common to the neighborhood, and it must be incidental to the character of the business and not independent of the relation of master and servant. Sandy v. Stackhouse, Inc., 258 N. C. 194, 128 S. E. (2d) 218 (1962).

Accident Caused Partly or Solely by Idiopathic Condition.—Where the accident and resultant injury arise out of both the idiopathic condition of the workman and hazards incident to the employment, the employer is liable. But not so where the idiopathic condition is the sole cause of the injury. Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

Risk of Injury from Lightning.—The generally recognized rule is that where the injured employee is by reason of his employment peculiarly or specially exposed to a risk of injury from lightning—that is, one greater than other persons in the community,—death or injury resulting

from this source usually is compensable as an injury by accident arising out and in the course of the employment. Pope v. Goodson, 249 N. C. 690, 107 S. E. (2d) 524 (1959).

Where a carpenter, caught in a storm while working, went to a nearby house under construction by his employer to get out of the rain and, while standing near a window talking with his employer and wearing wet clothes, and a carpenter's nail apron with nails therein, was killed by lightning, all damage to the clothes and marks on the body being from the waist down, with the nail apron knocked off, a hole burned in it, and a majority of the nails in it fused, the evidence was sufficient to support the conclusion that the circumstances of the carpenter's employment peculiarly exposed him to the risk of injury from lightning greater than that of others in the community, and to sustain an award of compensation. Pope v. Goodson, 249 N. C. 690, 107 S. E. (2d) 524 (1959).

Risks Not Incidental to Employment of Night Watchman.—

For note on death of night watchman as arising out of and in the course of employment, see 34 N. C. Law Rev. 607.

b. Falls.

When Fall Constitutes Compensable Accident.—

A fall itself is usually regarded as a compensable accident. Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

Injuries sustained in a fall in which the employee's leg unexplainedly gave way were held to be attributable solely to the employee's idiopathic condition, and thus, recovery was denied. Cole v. Guilford County, 259 N. C. 724, 131 S. E. (2d) 308 (1963).

d. Street and Highway Accidents.

Editor's Note.—

For note on street accidents arising out of and in the course of employment, see 32 N. C. Law Rev. 373.

In General.—

An injury caused by a highway accident is compensable if the employee at the time of the accident is acting in the course of his employment and in the performance of some duty incident thereto. Hardy v. Small, 246 N. C. 581, 99 S. E. (2d) 862 (1957) (farm employee killed while crossing highway on return from barn).

3. Time, Place and Circumstances of Accident.

a. Injuries While Acting for Benefit of Self or Third Person.

Employee off Duty and on Personal Errand. — The Commission found facts which clearly show that the deceased employee, although temporarily assigned to work in a distant town in another state, with board and room furnished by the power company for which the emergency work was being done, was off duty and upon a personal errand, unrelated to any duty in connection with his employment when he was struck by an automobile and killed. Sandy v. Stackhouse, Inc., 258 N. C. 194, 128 S. E. (2d) 218 (1962).

Employee Assisting Another Contractor on Same Job.—Evidence to the effect that a deceased employee was working under the direct supervision and instruction of his superior in attempting to make repairs on a drum that actually belonged to another contractor working on the same job and that the two contractors on prior occasions had assisted each other without charge sustained the finding that the injury arose out of and in the course of employment. Butler v. Jones Plumbing & Heating Co., 244 N. C. 525, 94 S. E. (2d) 556 (1956).

b. Injuries While Going to and from Work.

(1) General Rule.

Editor's Note.—For note on injuries sustained by employee while going to and from work, see 36 N. C. Law Rev. 367.

Injury Suffered Going to or Returning from Work.—

In accord with 1st paragraph in original. See Hardy v. Small, 246 N. C. 581, 99 S. E. (2d) 862 (1957); Humphrey v. Quality Cleaners & Laundry, 251 N. C. 47, 110 S. E. (2d) 467 (1959).

An injury sustained by an employee while going to or from work does not arise in the course of his employment and is not compensable unless the employer is under a contractual duty to transport employee or furnishes the means of transportation as an incident of the contract of employment. Whittington v. A. J. Schnierson & Sons, Inc., 255 N. C. 724, 122 S. E. (2d) 724 (1961).

Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand

is shown. Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

Farm Employee Killed While Crossing Highway on Return from Barn to Home.—Where farm employee, who lived on farm, was killed while crossing highway when returning from barn, to which he had gone to feed livestock, to area of house in which he lived, the injury arose out of and in the course of his employment. Hardy v. Small, 246 N. C. 581, 99 S. E. (2d) 862 (1957).

(3) On Employer's Premises.

Injury on Employer's Premises May Be Compensable.—

As an exception to the general rule, known as the "going and coming rule," that injuries sustained by an employee while going to or from work are not ordinarily compensable, the great weight of authority holds that injuries sustained by an employee while going to or from his place of work upon premises owned or controlled by his employer are generally deemed to have arisen out of and in the course of the employment within the Workmen's Compensation Act and are compensable, provided the employee's act involves no unreasonable delay. Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962).

Injury on Parking Lot Provided by Employer.—Where the employer provides a parking lot on its premises next to its factory and permits its employees to park their cars in the lot, an injury received by an employee in a fall while she was walking from her parked car on her way to the other part of the employer's premises where she actually worked, is an injury arising out of and in the course of her employment within the purview of this section. Davis v. Devil Dog Mfg. Co., 249 N. C. 543, 107 S. E. (2d) 102 (1959).

(4) Where Employer Furnishes Transportation.

Abandoning Vehicle Furnished by Employer.—

Where making a trip to a farm to load poultry and a return trip to the place of business of the employer after the poultry was loaded constituted a substantial part of the services for which claimant was employed, the transfer of claimant from the truck of the employer to his own automobile in order that he might have it so that he could return home after he made his required report at the office of his employer, did not constitute a distinct departure on a personal errand, disassociated from his master's business, where claimant's home was located on the most direct route between the farm and the plant, and when the collision occurred, claimant was proceeding on this direct route to the place of business of his employer. Brewer v. Powers Truck Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

f. Deviation, Departure and Abandonment.

Violation of Orders.—

Where an employee is employed solely for a particular job such as operating a chain saw, and is positively forbidden to perform another job connected with the work, such as operating a tractor, an injury received while performing the forbidden task does not arise out of a hazard of the employment, and is not compensable. Taylor v. Dixon, 251 N. C. 304, 111 S. E. (2d) 181 (1959).

Selection of More Hazardous Route.—The evidence tended to show that claimant, in the performance of his duty to go to a guard tower outside of a high wire fence, elected to climb over the fence rather than go around by the gate, which would require approximately 200 yards of travel, and was injured when he jumped from the top of the fence to avoid falling therefrom. Held: The evidence sustains the award of compensation, and the contention that claimant climbed the fence for his own convenience rather than as a part of his duties is untenable, since the mere fact that an employee selected the more hazardous route in the performance of his duties does not defeat recovery. Hartley v. North Carolina Prison Department, 258 N. C. 287, 128 S. E. (2d) 598 (1962).

4. Evidence and Burden of Proof.

Evidence Sufficient to Sustain Findings.—Evidence that claimant received an injury while attempting, alone, to elevate and hold a 175 pound cabinet in place while another workman secured it to the wall, and that three men were usually assigned to the installation of such cabinets on the construction job, was sufficient to sustain a finding that claimant suffered a compensable injury by accident arising out of and in the course of his employment. Davis v. Summitt, 259 N. C. 57, 129 S. E. (2d) 588 (1963).

Findings of fact by the Industrial Commission were supported by competent evidence and supported its conclusion of law that the deceased's injuries resulting in death did not arise out of and in the course of his employment. Thornton v. J. A. Richardson Co., Inc., 258 N. C. 207, 128 S. E. (2d) 256 (1962).

5. Miscellaneous Illustrative Cases.

Injury Sustained While Taking Medical Test. —

For comment, see 36 N. C. Law Rev. 110.

D. Injury from Disease.

Evidence Insufficient to Show Coronary Occlusion Arose Out of and in Course of Employment. — Evidence that plaintiff suffered a coronary occlusion while rolling a heavy rope net in the course of his employment, with medical expert testimony that the exercise could not be the cause of the condition, although the attack might have been accelerated or precipitated by the exertion, was insufficient to sustain a finding that the coronary occlusion and resulting myocardial infarction arose out of and in the course of the employment. Bellamy v. Morance Stevedoring Co., 258 N. C. 327, 128 S. E. (2d) 395 (1962).

VI. COMPENSATION.

"Compensation," means money relief afforded according to a scale established and for the persons designated in this chapter. Ivey v. North Carolina Prison Department, 252 N. C. 615, 114 S. E. (2d) 812 (1960).

Involves More Than Burial Expenses.— The definition of compensation in this section includes burial expenses, but it takes the whole to constitute compensation and not one of its parts. Compensation for wrongful death involves more than the burial of the body. Ivey v. North Carolina Prison Department, 252 N. C. 615, 114 S. E. (2d) 812 (1960).

IX. HERNIA.

Unusual Circumstances or Exertion Required.—

In accord with 2nd paragraph in original. See Holt v. Cannon Mills Co., 249 N. C. 215, 105 S. E. (2d) 614 (1958).

If an employee, while performing his regular duties in the "usual and customary manner," receives an injury resulting in a hernia, such injury is not compensable. Faires v. McDevitt & Street Co., 251 N. C. 194, 110 S. E. (2d) 898 (1959).

Evidence Justifying Finding of Compensable Hernia.—

Evidence tending to show that the employee was a carpenter and customarily did the work of a carpenter, that in removing concrete forms carpenters usually "stripped" the forms and laborers lifted and removed them, that on the occasion in question other carpenters and helpers had been withdrawn from the job, that the lifting of the forms was usually and customarily done by two men, and that while the employee was attempting to lift one of the forms by himself, requiring extreme exertion and strain in a confined and difficult place of work, he felt a sharp pain which continued until he had received medical treatment for the hernia, is held sufficient to support a finding of the Industrial Commission that the employee suffered an injury by accident arising out of and in the course of his employment, resulting in the hernia. Faires v. McDevitt & Street Co., 251 N. C. 194, 110 S. E. (2d) 898 (1959).

§ 97-3. Presumption that all employers and employees have come under provisions of chapter.

In general, doctrines of waiver and estoppel do not apply in workmen's compensation cases and they may not be invoked to defeat rights granted, or to avoid burdens imposed thereunder. Ashe v. Barnes, 255 N. C. 310, 121 S. E. (2d) 549 (1961).

§ 97-4. Notice of nonacceptance and waiver of exemption.

Cited in Ashe v. Barnes, 255 N. C. 310, 121 S. E. (2d) 549 (1961).

§ 97-6. No special contract can relieve an employer of obligations.

Liability to Employee Suffering from Pre-existing Infirmity.—An employee who becomes disabled as the result of an accident while at work is not to be deprived of benefits because of any pre-existing infirmity. And this liability of the employer cannot be waived or released or diminished by any agreement of the employee. National Labor Relations Board v. Cranston Print Works Co., 258 F. (2d) 206 (1958).

Delegation of Authority.—A corporation, having been given a franchise for the operation of motor trucks on the highway as a carrier of goods in interstate commerce, cannot evade its responsibility by delegating its authority to others. Watkins v. Murrow, 253 N. C. 652, 118 S. E. (2d) 5 (1961).

Leases. — An employer may not, by leasing the truck of one not authorized to transport goods in interstate commerce and causing its operation under its own franchise and license plates for interstate

transportation, avoid legal responsibility therefor. Watkins v. Murrow, 253 N. C. 652, 118 S. E. (2d) 5 (1961).

Employer May Make Provisions for Injured Employee beyond Workmen's Compensation Benefits.—There is nothing in the Workmen's Compensation Act that prohibits an employer from making special provisions for an injured employee beyond those benefits which the employee is entitled to receive under the provisions of our Workmen's Compensation Act. Ashe v. Barnes, 255 N. C. 310, 121 S. E. (2d) 549 (1961).

But He May Not Substitute Accident Insurance Policy for Such Benefits. — There is no provision in the law which authorizes an employer subject to our Workmen's Compensation Act to substitute an accident policy in lieu of compensation and other benefits required by our Workmen's Compensation Act. Ashe v. Barnes, 255 N. C. 310, 121 S. E. (2d) 549 (1961).

Employee Accepting Policy Does Not Exempt Himself from Compensation Act. —Where an employee elected to accept the insurance policy provided for him by his employer, he did not elect thereby to exempt himself from the provisions of the Workmen's Compensation Act. Ashe v. Barnes, 255 N. C. 310, 121 S. E. (2d) 549 (1961).

Nor Is He Estopped to Claim Compensation by Accepting Benefits under Policy. —Where an employee accepted benefits under an insurance policy, he did not thereby estop himself from claiming under the provisions of our Workmen's Compensation Act. Ashe v. Barnes, 255 N. C. 310, 121 S. E. (2d) 549 (1961).

§ 97-7. State or subdivision and employees thereof. — Neither the State nor any municipal corporation within the State, nor any political subdivision thereof, nor any employee of the State or of any such corporation or subdivision, shall have the right to reject the provisions of this article relative to payment and acceptance of compensation, and the provisions of §§ 97-4, 97-5, 97-14, 97-15, 97-16, and 97-100 (j) shall not apply to them: Provided, that all such corporations or subdivisions are hereby authorized to self-insure or purchase insurance to secure its liability under this article and to include thereunder the liability of such subordinate governmental agencies as the county board of health, the school board, and other political and quasi-political subdivisions supported in whole or in part by the municipal corporation or political subdivision of the State, and to appropriate an amount sufficient for this purpose and levy a special tax if a special tax is necessary to pay the costs of same. (1929, c. 120, s. 8; 1931, c. 274, s. 1; 1945, c. 766; 1957, c. 1396, s. 1; 1961, c. 1200.)

Editor's Note.—

The 1961 amendment, effective July 1, 1961, inserted the reference to § 97-100 (j).

§ 97-9. Employer to secure payment of compensation.

Act Provides Sole Remedy against Employer and Those Conducting His Business.—Under the Workmen's Compensation Act, where an employee's injury or death is compensable, the sole remedy against the employer and "those conducting his business" is that provided by its terms. Weaver v. Bennett, 259 N. C. 16, 129 S. E. (2d) 610 (1963).

Cited in Jones v. Douglas Aircraft Co., 253 N. C. 482, 117 S. E. (2d) 496 (1960).

§ 97-10: Repealed by Session Laws 1959, c. 1324.

Editor's Note.—Sections 97-10.1 through 97-10.3 have been substituted in lieu of the repealed section.

§ 97-10.1. Other rights and remedies against employer excluded. —If the employee and the employer are subject to and have accepted and complied with the provisions of this article, then the rights and remedies herein granted to the employee, his dependents, next of kin, or personal representative shall exclude all other rights and remedies of the employee, his dependents, next of kin, or representative as against the employer at common law or otherwise on account of such injury or death. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324.)

Amending Employee's Counterclaim to Show Interest of Employer's Carrier.—See Ray v. French Broad Electric Membership Corp., 252 N. C. 380, 113 S. E. (2d) 806 (1960), decided under former § 97-10.

§ 97-10.2. Rights under article not affected by liability of third party; rights and remedies against third parties.—(a) The right to compensation and other benefits under this article for disability, disfigurement, or death shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the employer to pay damages therefor, such person hereinafter being referred to as the "third party." The respective rights and interests of the employee-beneficiary under this article, the employer, and the employer's insurance carrier, if any, in respect of the common-law cause of action against such third party and the damages recovered shall be as set forth in this section.

(b) The employee, or his personal representative if he be dead, shall have the exclusive right to proceed to enforce the liability of the third party by appropriate proceedings if such proceedings are instituted not later than twelve months after the date of injury or death, whichever is later. During said twelve-month period, and at any time thereafter if summons is issued against the third party during said twelve-month period, the employee or his personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of such injury or death, subject to the provisions of (h) below.

(c) If settlement is not made and summons is not issued within said twelve-month period, and if the employer shall have filed with the Industrial Commission a written admission of liability for the benefits provided by this chapter, then all rights of the employee, or his personal representative if he be dead, against the third party shall pass by operation of law to the employer upon the expiration of said twelve-month period. All such rights shall then remain in the employer until sixty (60) days before the expiration of the period fixed by the statute of limitations applicable to such rights and if the employer shall not have settled with or instituted proceedings against the third party within such time, then all such rights shall revert to the employee or his personal representative sixty (60) days before the expiration of the applicable statute of limitations.

(d) The person in whom the right to bring such proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by (h) below. A proceeding so instituted by the person having the right shall be brought in the name of the employee or his personal representative and the employer or the insurance carrier shall not be a necessary or proper party thereto. If the employee or his personal representative should refuse to co-operate with the employer by being the party plaintiff, then the action shall be brought in the name of the employer and the employee or his personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of such injury or death shall not be admissible in evidence in any proceeding against the third party. If the third party defending such proceeding, by answer duly served on the employer, sufficiently alleges that actionable negligence of the employer joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in such case as to whether actionable negligence of the employer joined and concurred with the negligence of the third party in producing the injury or death. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the

jury as to this issue as fully as though he were a party although not named or joined as a party to the proceeding. Such issue shall be the last of the issues submitted to the jury. If the verdict shall be that actionable negligence of the employer did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the employer would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the employee or his personal representative free of any claim by the employer and the third party shall have no further right by way of contribution or otherwise against the employer, except any right which may exist by reason of an express contract of indemnity between the employer and the third party, which was entered into prior to the injury to the employee.

(f) (1) If the employer has filed a written admission of liability for benefits under this chapter with, or if an award final in nature in favor of the employee has been entered by, the Industrial Commission, then any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of such injury or death shall be disbursed by order of the Industrial Commission for the following purposes and in the following order of priority:

a. First to the payment of actual court costs taxed by judgment.

b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and such fee shall not be subject to the provisions of § 90 of this chapter but shall not exceed one third of the amount obtained or recovered of the third party.

c. Third to the reimbursement of the employer for all benefits by way of compensation or medical treatment expense paid or to be paid by the employer under award of the Industrial Commission.

d. Fourth to the payment of any amount remaining to the employee or his personal representative.

(2) The attorney fee paid under (f) (1) shall be paid by the employee and the employer in direct proportion to the amount each shall receive under (f) (1) c and (f) (1) d hereof and shall be deducted from such payments when distribution is made.

(g) The insurance carrier affording coverage to the employer under this chapter shall be subrogated to all rights and liabilities of the employer hereunder but this shall not be construed as conferring any other or further rights upon such insurance carrier than those herein conferred upon the employer, anything in the policy of insurance to the contrary notwithstanding.

(h) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of his interest under (f) hereof upon any payment made by the third party by reason of such injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and such lien may be enforced against any person receiving such funds. Neither the employee or his personal representative nor the employer shall make any settlement with or accept any payment from the third party without the written consent of the other and no release to or agreement with the third party shall be valid or enforceable for any purpose unless both employer and employee or his personal representative join therein; provided, that this sentence shall not apply if the employer is made whole for all benefits paid or to be paid by him under this chapter less attorney's fees as provided by (f) (1) and (2) hereof and the release to or agreement with the third party is executed by the employee.

(i) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this chapter, shall not in any way or manner affect

any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324; 1963, c. 450, s. 1.)

Editor's Note. — The 1963 amendment deleted "common-law" formerly appearing before "liability" in the first sentence of subsection (a).

Action against Those Conducting Business of Employer Not Authorized. — The provision of former § 97-10 giving the injured employee or his personal representative "a right to recover damages for such injury, loss of service, or death from any person other than the employer," meant any other person or party who was a stranger to the employment but whose negligence contributed to the injury. Such provision did not authorize the injured employee to maintain an action at common law against those conducting the business of the employer whose negligence caused the injury. Jackson v. Bobbitt, 253 N. C. 670, 117 S. E. (2d) 806 (1961).

Proceeds of Settlement or Judgment to Be Disbursed According to Provisions of Act.—It is mandatory under the provisions of the Workmen's Compensation Act that any recovery against a third party by reason of an injury to or death of an employee subject to the Act, the proceeds received from such settlement with or judgment against the third party, shall be disbursed according to the provisions of the Workmen's Compensation Act. Cox v. Pitt County Transp. Co., Inc., 259 N. C. 38, 129 S. E. (2d) 589 (1963).

Industrial Commission Has Exclusive Original Jurisdiction to Determine Right to Subrogation. — The Declaratory Judgment Act may not be used to determine whether or not the employer's insurance carrier is entitled to the right of subrogation against the funds received from the third party tort-feasor, under the provisions of this section, since the Industrial Commission has the exclusive original jurisdiction to determine the question. Cox v. Pitt County Transp. Co., Inc., 259 N. C. 38, 129 S. E. (2d) 589 (1963).

Evidence of Compensation Payments Inadmissible in Action by Employee against Third Party. — Evidence of payments by an employer, as self-insurer under the Workmen's Compensation Act, to an injured employee was inadmissible in an action by the employee against a third party. Redding v. Braddy, 258 N. C. 154, 128 S. E. (2d) 147 (1962).

Cited in Ray v. French Broad Electric Membership Corp., 252 N. C. 380, 113 S. E. (2d) 806 (1960).

§ 97-10.3. Minors illegally employed.—In any case where an employer and employee are subject to the provisions of this chapter, any injury to a minor while employed contrary to the laws of this State shall be compensable under this chapter as if said minor were an adult, subject to the other provisions of this chapter. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324.)

Cited in Ray v. French Broad Electric Membership Corp., 252 N. C. 380, 113 S. E. (2d) 806 (1960).

§ 97-12. Intoxication or willful neglect of employee; willful disobedience of statutory duty, safety regulation or rule.

Act Eliminates Fault of Workmen as Basis for Denying Recovery.—Compensation acts were intended to eliminate the fault of the workman as a basis for denying recovery. Hartley v. North Carolina Prison Dept., 258 N. C. 287, 128 S. E. (2d) 598 (1962).

Not even gross negligence is a defense to a compensation claim. Hartley v. North Carolina Prison Dept., 258 N. C. 287, 128 S. E. (2d) 598 (1962).

Only intoxication or injury intentionally inflicted will defeat a claim. Hartley v. North Carolina Prison Dept., 258 N. C. 287, 128 S. E. (2d) 598 (1962).

Violation of Safety Rule Merely Reduces Amount of Award.—An intentional violation of an approved safety rule of which he had prior notice will not defeat, but will only reduce the amount of an award. Hartley v. North Carolina Prison Dept., 258 N. C. 287, 128 S. E. (2d) 598 (1962).

Death Occasioned by Violation of Safety Statute and Intoxication.—Findings, supported by evidence, that in overtaking a truck preceding him on the highway, his car left skid marks for 75 feet straight in a line forward and then skid marks sideways across the center of the highway to

his left, and that his car was struck by a car approaching from the opposite direction, together with evidence that his blood contained .20 per cent of alcohol, are held sufficient to show that the accident resulted from the employee's violation of a safety statute and to support the finding of the Industrial Commission that the employee's injury and death was occasioned by his intoxication, and judgment denying compensation is affirmed. Osborne v. Colonial Ice Co., 249 N. C. 387, 106 S. E. (2d) 573 (1959).

Suicide Induced by Insanity.—Evidence was sufficient to support a finding that by reason of insanity a suicide was the result of an uncontrollable impulse, or in a delirium of frenzy without conscious volition to cause death. Painter v. Mead Corp., 258 N. C. 741, 129 S. E. (2d) 482 (1963).

Quoted in Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

§ 97-13. Exceptions from provisions of article.

I. IN GENERAL.

Editor's Note.—Section 97-10, referred to in the last sentence of subsection (c) of this section, has been repealed and §§ 97-10.1 through 97-10.3 substituted in lieu thereof.

V. NUMBER OF EMPLOYEES.

Employment of More Than Five Must Affirmatively Appear.—

To sustain the jurisdiction of the Commission it must affirmatively appear that the employer, which it undertakes to bind by its award, had as many as five men in his or its employment. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

Same—Remand to Determine Number of Employees.—It is not error for the superior court to remand a proceeding in order that the facts with respect to the number of employees in the employment of the defendant at the time the employee was injured might be ascertained by the Industrial Commission. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

VI. PRISONERS.

Cross Reference. — As to action for wrongful death of prisoner under State Tort Claims Act, see note to § 143-291.

Claim for Burial Expenses.—It was assumed, for the purposes of the case, that this section permits the establishment of a claim for the burial expenses of a prisoner whose death occurred while a prisoner. Lawson v. North Carolina State Highway & Public Works Comm., 248 N. C. 276, 103 S. E. (2d) 366 (1958).

Action for Wrongful Death under Tort Claims Act Not Barred.—Subsection (c) of this section was held not to be a bar in an action for wrongful death of a prisoner brought under the Tort Claims Act. Ivey v. North Carolina Prison Department, 252 N. C. 615, 114 S. E. (2d) 812 (1960).

The second 1957 amendment to this section does not deny to prisoners on assigned tasks rights conferred by the Tort Claims Act. Ivey v. North Carolina Prison Department, 252 N. C. 615, 114 S. E. (2d) 812 (1960), holding the payment of burial expenses is not payment of "compensation" under the Workmen's Compensation Act so as to make the remedy of the personal representative of such a prisoner under subsection (c) exclusive by virtue of former § 97-10.

§ 97-17. Settlements allowed in accordance with article.—Nothing herein contained shall be construed so as to prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this article. A copy of such settlement agreement shall be filed by employer with and approved by the Industrial Commission: Provided, however, that no party to any agreement for compensation approved by the Industrial Commission shall thereafter be heard to deny the truth of the matters therein set forth, unless it shall be made to appear to the satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue influence or mutual mistake, in which event the Industrial Commission may set aside such agreement. (1929, c. 120, s. 18; 1963, c. 436.)

Editor's Note. — The 1963 amendment added the proviso at the end of this section.

The law, by this section, undertakes to protect the rights of the employee in contracting with respect to his injuries. Caudill v. Chatham Mfg. Co., 258 N. C. 99, 128 S. E. (2d) 128 (1962).

The presumption is that the Industrial Commission approves compromises only after a full investigation and a determination that the settlement is fair and just. Caudill v. Chatham Mfg. Co., 258 N. C. 99, 128 S. E. (2d) 128 (1962).

Setting Aside Settlement.—Where the mistake relied on to set aside a release related only to the consequences of a known injury, and uncertainties in this regard were the subject matter of the compromise settlement, the mistake was not such as to warrant a court of equity in setting aside a release executed pursuant to a settlement approved by the Industrial Commission under this section. Caudill v. Chatham Mfg. Co., 258 N. C. 99, 128 S. E. (2d) 128 (1962).

The question whether the Industrial Commission has jurisdiction to rescind and set aside settlements and compromise settlements, approved by them, on the ground of mutual mistake of fact, was touched on, but not decided, in Caudill v. Chatham Mfg. Co., 258 N. C. 99, 128 S. E. (2d) 128 (1962).

Setting Aside Award Without Setting Aside Agreement.—An agreement for the payment of compensation is binding on the parties when approved by the Industrial Commission, and therefore where such agreement has been signed and approved by the Commission and an award entered thereon, and the Commission has entered an order setting aside the award alone without disturbing the Commission's approval or the agreement of the parties, for fraud, mistake, or misunderstanding, such agreement precludes action at common law. Neal v. Clary, 259 N. C. 163, 130 S. E. (2d) 39 (1963).

§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.

Editor's Note.—

For note as to rights of employees of subcontractors against owners and principal contractors, see 35 N. C. Law Rev. 569.

§ 97-23. What notice is to contain; defects no bar; notice personally or by registered letter or certified mail.

—The notice provided in the foregoing section shall state in ordinary language the name and address of the employee, the time, place, nature, and cause of the accident, and of the resulting injury or death; and shall be signed by the employee or by a person on his behalf, or, in the event of his death, by any one or more of his dependents, or by a person in their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby, and then only to such extent as the prejudice.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State, or may be sent by registered letter or certified mail addressed to the employer at his last known residence or place of business. (1929, c. 120, s. 23; 1959, c. 863, s. 1.)

Editor's Note.—The 1959 amendment inserted "or certified mail" in the last paragraph.

§ 97-24. Right to compensation barred after two years; destruction of records.

The requirement that the claim be filed within a certain time is a condition precedent, etc.—

The plaintiff's inchoate right to compensation arose by operation of law on the date of the accident. But his substantive right to compensation was not fixed by the simple fact of injury arising out of and in the course of his employment. The requirement of filing claim within the time limited by this section was a condition precedent to his right to compensation. Necessarily, then, the element of filing claim within the time limited was of the very essence of the plaintiff's right to recover compensation. McCrater v. Stone & Webster Engineering Corp., 248 N. C. 707, 104 S. E. (2d) 858 (1958).

Time Limit in Effect on Date of Accident Controls.—The time limit fixed by this section as it existed on the date of the accident, being a part of the plaintiff's

substantive right of recovery, could not be enlarged by subsequent statute, i. e., the 1955 amendment. To do so would be to deprive the defendants of vested right. McCrater v. Stone & Webster Engineering Corp., 248 N. C. 707, 104 S. E. (2d) 858 (1958).

§ 97-25. Medical treatment and supplies.

Appeal from Approval of Medical Bills.—When the Commission approves claimant's medical, etc., bills, defendant then has a right on appeal to challenge the action of the Commission in respect to the bills approved by it, in whole or in part, if it deems it advisable to do so. Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962).

§ 97-26. Liability for medical treatment measured by average cost in community; malpractice of physician.

Cited in Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962).

§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; autopsy.—(a) After an injury, and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Industrial Commission, shall, subject to the provisions of subsection (b), submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Industrial Commission. The employee shall have the right to have present at such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this article or any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this article. If the employee refuses to submit himself to or in any way obstructs such examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute any proceedings under this article shall be suspended until such refusal or objection ceases, and no compensation shall at any time be payable for the period of obstruction, unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. The employer, or the Industrial Commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same.

(b) In those cases arising under this article in which there is a question as to the percentage of permanent disability suffered by an employee, if any employee, required to submit to a physical examination under the provisions of subsection (a) is dissatisfied with such examination or the report thereof, he shall be entitled to have another examination by a duly qualified physician or surgeon licensed and practicing in North Carolina designated by him and paid by the employer or the Industrial Commission in the same manner as physicians designated by the employer or the Industrial Commission are paid. Provided, however, that all travel expenses incurred in obtaining said examination shall be paid by said employee. The employer shall have the right to have present at such examination a duly qualified physician or surgeon provided and paid by him. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this article or any action at law. (1929, c. 120, s. 27; 1959, c. 732.)

Editor's Note.—The 1959 amendment designated the former section as (a), inserted in lines three and four thereof the words "subject to the provisions of subsection (b)," and added subsection (b).

Analysis of Blood Taken from Body after Death.—The percentage of alcohol in the blood stream of a deceased employee, determined by chemical analysis of a sample of blood taken from his body shortly after death, was competent evidence on the question of intoxication. Osborne v. Colonial Ice Co., 249 N. C. 387, 106 S. E. (2d) 573 (1959).

§ 97-29. Compensation rates for total incapacity.—Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty per cent of his average weekly wages, but not more than thirty-seven dollars and fifty cents ($37.50), nor less than ten dollars per week during not more than four hundred weeks from the date of the injury, provided that the total amount of compensation paid shall not exceed twelve thousand dollars.

In cases in which total and permanent disability results from paralysis resulting from an injury to the brain or spinal cord or from loss of mental capacity resulting from an injury to the brain, compensation, including reasonable and necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to the four hundred weeks limited herein or to the twelve thousand dollars maximum compensation under this article. In all such cases, however, if death results from the injury and within three hundred and fifty weeks from the date of accident and before the compensation paid totals twelve thousand dollars, then compensation shall be paid for the remainder of the three hundred and fifty week period or until the full twelve thousand dollars, including the four hundred dollar funeral benefit, shall have been paid, whichever is sooner, as in any other death case.

The weekly compensation payment for members of the North Carolina National Guard and the North Carolina State Guard shall be the maximum amount of thirty-seven dollars and fifty cents ($37.50) per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be ten dollars a week as fixed herein, provided that the last sentence herein shall not apply to Ashe, Avery, Bladen, Carteret, Caswell, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga, and Wilkes counties.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this article. (1929, c. 120, s. 29; 1939, c. 277, s. 1; 1943, c. 502, s. 3; c. 543; c. 672, s. 2; 1945, c. 766; 1947, c. 823; 1949, c. 1017; 1951, c. 70, s. 1; 1953, c. 1135, s. 1; 1953, c. 1195, s. 2; 1955, c. 1026, s. 5; 1957, c. 1217; 1963, c. 604, s. 1.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "thirty-seven dollars and fifty cents ($37.50)" for "thirty-five dollars ($35.00)" in the first and third paragraphs. It also substituted "twelve thousand dollars" for "ten thousand dollars" in the first and second paragraphs.

This section is not subject to the limitation imposed by the proviso of § 97-37. Inman v. Meares, 247 N. C. 661, 101 S. E. (2d) 692 (1958).

Where an employee filed claim for total temporary disability under this section and thereafter recovered from his disabling injury and returned to his employment and was fatally injured in a compensable accident unconnected with the prior claim, the claim for disability did not come within the proviso of § 97-37 and the right to payments accrued at the time of the employee's death had vested and survived to his personal representative. Inman v. Meares, 247 N. C. 661, 101 S. E. (2d) 692 (1958).

There is no maximum award where there is permanent disability due to injury to spinal cord. Baldwin v. Amazon Cotton Mills, 253 N. C. 740, 117 S. E. (2d) 718 (1961).

Cited in McDowell v. Kure Beach, 251 N. C. 818, 112 S. E. (2d) 390 (1960); Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

§ 97-30. Partial incapacity.—Except as otherwise provided in § 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to 60 per centum of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than thirty-seven dollars and fifty cents ($37.50) a week, and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this article. (1929, c. 120, s. 30; 1943, c. 502, s. 4; 1947, c. 823; 1951, c. 70, s. 2; 1953, c. 1195, s. 3; 1955, c. 1026, s. 6; 1957, c. 1217; 1963, c. 604, s. 2.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "thirty-seven dollars and fifty cents ($37.50)" for "thirty-five dollars ($35.00)" in the first sentence.

Test of Earning Capacity.—

In accord with 3rd paragraph in original. See Evans v. Asheville Citizens Times Co., 246 N. C. 669, 100 S. E. (2d) 75 (1957).

§ 97-31. Schedule of injuries; rate and period of compensation.

(22) In case of serious bodily disfigurement for which no compensation is payable under any other subdivision of this section, but excluding the disfigurement resulting from permanent loss or permanent partial loss of use of any member of the body for which compensation is fixed in the schedule contained in this section, the Industrial Commission may award proper and equitable compensation not to exceed three thousand and five hundred dollars ($3,500.00).

(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed three thousand five hundred dollars ($3,500.00). (1929, c. 120, s. 31; 1931, c. 164; 1943, c. 502, s. 2; 1955, c. 1026, s. 7; 1957, c. 1221; c. 1396, ss. 2, 3; 1963, c. 424, ss. 1, 2.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, made changes in subdivision (22) and added subdivision (24). As these were the only subdivisions affected by the amendment the rest of the section is not set out.

Amount Awarded for Loss of Vision.—

For note as to eye injuries and loss of vision, see 35 N. C. Law Rev. 443.

Effect of 1957 Amendment to Subsection (19).—Before the 1957 amendment to subsection (19) of this section an award for partial disability was to be based on a percentage of the weekly wage for the entire period rather than a percentage of the number of weekly payments. Kellams v. Carolina Metal Products, Inc., 248 N. C. 199, 102 S. E. (2d) 841 (1958).

Award for Partial Disability under Subsection (19) Is Subject to Minimum Provided in § 97-29. — Under the provisions of subsection (20) of this section, awards for partial loss or partial loss of use of a member under subsection (19) were subject to the minimum fixed in § 97-29 in like manner as awards for total disability, and therefore the weekly payments of an award for partial disability should not have been less than the minimum fixed by § 97-29. Kellams v. Carolina Metal Products, Inc., 248 N. C. 199, 102 S. E. (2d) 841 (1958).

Discretion of Commission in Awarding Compensation for Disfigurement.—

In accord with 1st and 2nd paragraphs

in original. See Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957).

Provisions as to Disfigurement Are Not Invalid for Failure to Provide Guide or Standard.—The fact that there exists a board area in which the judgment of the Commission with reference to the particular factual situation is determinative does not invalidate the statutory provision on the ground of failure to provide an intelligible guide or standard for the award of compensation for serious disfigurement causing impairment of future earning power. Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957).

Determining Award for Serious Disfigurement.—

In accord with original. See Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957).

There is a serious disfigurement in law only when there is a serious disfigurement in fact. A serious disfigurement in fact is a disfigurement that mars and hence adversely affects the appearance of the injured employee to such extent that it may be reasonably presumed to lessen his opportunities for remunerative employment and so reduces his future earning power. True, no present loss of wages need be established; but to be serious, the disfigurement must be of such nature that it may be fairly presumed that the injured employee has suffered a diminution of his future earning power. Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957).

Loss of or Permanent Injury to Important Organ of Body. — Under subsection (22) of this section as it stood before the 1957 amendment, "the loss or permanent injury to any important organ of the body for which no compensation is payable under the preceding subsections" would be the basis for a separate award only if it resulted in "serious bodily disfigurement." Such loss or permanent injury to an important organ of the body was not something different from or in addition to "serious bodily disfigurement" but rather, as indicated by the word "including," an instance of what might constitute "serious bodily disfigurement." Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957).

Loss of or Permanent Injury to Important Organ of Face or Head.—While subsection (21) does not refer in express terms to the loss of or permanent injury to any important organ of the face or head, such loss, if in fact a "serious facial or head disfigurement," is compensable thereunder. Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957).

Loss of Front Teeth.—If the loss of two upper front teeth constitutes serious disfigurement within the meaning of this section, it would be a "serious facial or head disfigurement" compensable under former subsection (21) rather than a "serious bodily disfigurement" compensable under former subsection (22). In such case, plaintiff would be entitled under (21) to an award as a matter of right. Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957), construing the former statute.

Whether an injured employee has suffered a "serious facial or head disfigurement" in the loss of two upper front teeth is a question of fact to be determined by the Commission, after taking into consideration the factors involved, in relation to whether it may be fairly presumed to cause a diminution of his future earning power. Davis v. Sanford Constr. Co., 247 N. C. 332, 101 S. E. (2d) 40 (1957).

Applied in Oaks v. Cone Mills Corp., 249 N. C. 285, 106 S. E. (2d) 202 (1958); Pratt v. Central Upholstery Co., 252 N. C. 716, 115 S. E. (2d) 27 (1960).

Cited in Evans v. Asheville Citizens Times Co., 246 N. C. 669, 100 S. E. (2d) 75 (1957); Inman v. Meares, 247 N. C. 661, 101 S. E. (2d) 692 (1958); McDowell v. Kure Beach, 251 N. C. 818, 112 S. E. (2d) 390 (1960); Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

§ 97-36. Accidents taking place outside State; employee receiving compensation from another state.—Where an accident happens while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, if the employer's place of business is in this State; provided his contract of employment was not expressly for service exclusively outside of the State; provided, however, if an employee shall receive compensation or damages under the laws of any other state nothing herein contained shall be construed so

as to permit a total compensation for the same injury greater than is provided for in this article. (1929, c. 120, s. 36; 1963, c. 450, s. 2.)

Editor's Note.—

The 1963 amendment deleted the words "and if the residence of the employee is in this State" formerly appearing immediately before the first proviso in this section.

For note on the application of full faith and credit to workmen's compensation statutes and awards, see 34 N. C. Law Rev. 501.

Concurrence of Three Factors Is Requisite for Jurisdiction.—

In accord with 1st paragraph in original. See Suggs v. Williamson Truck Lines, 253 N. C. 148, 116 S. E. (2d) 359 (1960).

Cited in Pearson v. Peerless Flooring Co., 247 N. C. 434, 101 S. E. (2d) 301 (1958); Warren v. Dixon & Christopher Co., 252 N. C. 534, 114 S. E. (2d) 250 (1960).

§ 97-37. Where injured employee dies before total compensation is paid.

Cross Reference.—See note to § 97-29.

Cited in Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-38. Where death results proximately from the accident; dependents; burial expenses; compensation to aliens; election by partial dependents.—If death results approximately from the accident and within two years thereafter, or while total disability still continues and within six years after the accident, the employer shall pay or cause to be paid, subject to the provisions of the other sections of this article, weekly payments of compensation equal to sixty per cent (60%) of the average weekly wages of the deceased employee at the time of the accident, but not more than thirty-seven dollars and fifty cents ($37.50), nor less than ten dollars, per week for a period of three hundred and fifty weeks from the date of the accident, and burial expenses not exceeding four hundred dollars, to the person or persons entitled thereto as follows:

(1) Persons wholly dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive the entire compensation payable share and share alike to the exclusion of all other persons. If there be only one person wholly dependent, then that person shall receive the entire compensation payable.

(2) If there is no person wholly dependent, then any person partially dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive a weekly payment of compensation computed as hereinabove provided, but such weekly payment shall be the same proportion of the weekly compensation provided for a whole dependent as the amount annually contributed by the deceased employee to the support of such partial dependent bears to the annual earnings of the deceased at the time of the accident.

(3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as "next of kin" in G. S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing in loco parentis to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this arti-

cle otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred and fifty weeks from the date of the injury.

Compensation payable under this article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to the surviving father or mother whom the employee has supported, either in whole or in part for a period of one year prior to the date of the injury; provided, that the Commission may, in its discretion, or, upon application of the employer or insurance carrier, shall commute all future installments of compensation to be paid to such aliens to their present value and payment of one-half (½) of such commuted amount to such aliens shall fully acquit the employer and the insurance carrier. (1929, c. 120, s. 38; 1943, c. 163; c. 502, s. 5; 1947, c. 823; 1951, c. 70, s. 3; 1953, c. 53, s. 1; 1955, c. 1026, s. 8; 1957, c. 1217; 1963, c. 604, s. 3.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted in the introductory paragraph "thirty-seven dollars and fifty cents ($37.50)" for "thirty-five dollars ($35.00)."

Death or Remarriage of Widow Before All Installments Paid.—This section places no limitation by way of forfeiture on compensation receivable where a widow, who has been awarded workmen's compensation for her husband's death, dies or remarries before all installments have been paid. Hill v. Cahoon, 252 N. C. 295, 113 S. E. (2d) 569 (1960).

Where a widow properly awarded compensation as the sole dependent of her deceased husband dies before all the installments of compensation have been paid, the commuted value of such future installments is properly paid to her personal representative, and the next of kin of the deceased employee, who are not dependents, are not entitled thereto. Hill v. Cahoon, 252 N. C. 295, 113 S. E. (2d) 569 (1960).

Where an employee has lost his life in the course of his employment and thereafter an award has been made by the Industrial Commission to his widow, as his sole dependent, and within a few months after the award is made his widow dies intestate, her administrator is entitled to the benefits of the award as made to her. Queen v. Champion Fibre Co., 203 N. C. 94, 164 S. E. (2d) 752 (1932).

Applied in Painter v. Mead Corp., 258 N. C. 741, 129 S. E. (2d) 482 (1963).

Quoted in Shealy v. Associated Transport, Inc., 252 N. C. 738, 114 S. E. (2d) 702 (1960).

Cited in Inman v. Meares, 247 N. C. 661, 101 S. E. (2d) 692 (1958); Fetner v. Rocky Mount Marble & Granite Works, 251 N. C. 296, 111 S. E. (2d) 324 (1959); Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-39. Widow, widower, or child to be conclusively presumed to be dependent; other cases determined upon facts; division of death benefits among those wholly dependent; when division among partially dependent.

Persons Presumptively Dependent and Persons Dependent in Fact Share Benefits Equally.—There is no provision in this section which gives a prior and exclusive right to persons who are presumed wholly dependent, under the terms of the section itself, as against those who are shown to be in fact wholly dependent without regard to any presumption. The legislature in enacting this section did not intend that those persons conclusively presumed to be wholly dependent should take the entire benefits to the exclusion of others wholly dependent upon deceased, but that they should share equally the benefits with those wholly dependent upon the earnings of the deceased at the time of the accident. Shealy v. Associated Transport, Inc., 252 N. C. 738, 114 S. E. (2d) 702 (1960).

Effect of Remarriage.—A widow, upon her remarriage, does not forfeit her right to receive compensation awarded her pursuant to the Workmen's Compensation Act. Hill v. Cahoon, 252 N. C. 295, 113 S. E. (2d) 569 (1960).

§ 97-40. **No compensation for death in absence of dependents; "next of kin" defined; commutation and distribution of compensation to partially dependent next of kin.**—If the deceased employee leaves neither whole nor partial dependents, no compensation shall be due or payable on account of the death of the deceased employee. For purposes of G. S. 97-38, "next of kin" shall include only child, father, mother, brother or sister of the deceased employee. For all such next of kin who were partially dependent on the deceased employee but who exercised the election provided for partial dependents in G. S. 97-38, the general law applicable to the distribution of the personal estate of persons dying intestate shall not apply and such person or persons, upon the exercise of such election, shall be entitled, share and share alike, to the compensation provided in G. S. 97-38 for whole dependents commuted to its present value and paid in a lump sum. (1929, c. 120, s. 40; 1931, c. 274, s. 5; c. 319; 1945, c. 766; 1953, c. 53, s. 2; 1953, c. 1135, s. 2; 1963, c. 604, s. 4.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, rewrote this section.

Quoted in Shealy v. Associated Transport, Inc., 252 N. C. 738, 114 S. E. (2d) 702 (1960); Queen v. Champion Fibre Co., 203 N. C. 94, 164 S. E. (2d) 752 (1932).

§ 97-40.1. **Second Injury Fund.**—(a) There is hereby created a fund to be known as the "Second Injury Fund," to be held and disbursed by the Industrial Commission as hereinafter provided.

For the purpose of providing money for said fund the Industrial Commission may assess against the employer or its insurance carrier the payment of not to exceed twenty-five dollars for the loss, or loss of use, of each minor member in every case of a permanent partial disability where there is such loss, and shall assess not to exceed one hundred dollars for fifty per cent or more loss or loss of use of each major member, defined as back, foot, leg, hand, arm, eye, or hearing.

In addition to the assessments hereinabove provided for, the Commission shall also deposit in said fund all moneys received by it for the Second Injury Fund under the provisions of G. S. 97-40.

(1963, c. 450, s. 3.)

Editor's Note.—

The 1963 amendment inserted the word "back" near the end of the second paragraph of subsection (a). As subsection (a) was the only subsection affected by the amendment the rest of the section is not set out.

§ 97-41. **Total compensation not to exceed $12,000.**—In cases where permanent total disability results from paralysis or loss of mental capacity caused by an injury to the brain or spinal cord, compensation shall be payable for the life of the injured employee as provided by G. S. 97-29. In all other cases, the total compensation paid, including the funeral benefit, shall not exceed twelve thousand dollars. (1929, c. 120, s. 41; 1947, c. 823; 1951, c. 70, s. 4; 1953, c. 1135, s. 3; 1955, c. 1026, s. 9; 1963, c. 604, s. 5.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, increased the maximum compensation from $10,000 to $12,000.

There is no maximum award where there is permanent disability due to injury to spinal cord. Baldwin v. Amazon Cotton Mills, 253 N. C. 740, 117 S. E. (2d) 718 (1961).

Reading Section in Argument to Jury.—See McCombs v. McLean Trucking Co., 252 N. C. 699, 114 S. E. (2d) 683 (1960).

§ 97-42. **Deduction of payments.**

Cross Reference.—As to effect of accident insurance policy procured by employer, see note to § 97-6.

§ 97-44. **Lump sums.**—Whenever any weekly payment has been continued for not less than six weeks, the liability therefor may, in unusual cases, where the

parties agree and the Industrial Commission deems it to be to the best interest of the employee or his dependents, or where it will prevent undue hardships on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Commission, but in no case to exceed the uncommuted value of the future installments which may be due under this article. The Commission, however, in its discretion, may at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated, in whole or in part, by the payment of a lump sum, the amount of which shall be fixed by the Commission, but in no case to exceed the uncommuted value of the future installments which may be due under this article. (1929, c. 120, s. 44; 1963, c. 450, s. 4.)

Editor's Note.—

The 1963 amendment substituted "uncommuted" for "commutable" near the middle and near the end of the section.

§ 97-47. Change of condition; modification of award.

Commission May Alter Compensation, etc.—

By this section the Industrial Commission is given authority to review an award and increase the compensation theretofore awarded when there has been a change of condition of the claimant, and when the evidence supports a finding of change of claimant's condition, the finding of the Commission is conclusive. Baldwin v. Amazon Cotton Mills, 253 N. C. 740, 117 S. E. (2d) 718 (1961).

A change of theory in the application for review in the superior court from that pursued before the hearing commissioner and the full commission is not permissible. McGinnis v. Old Fort Finishing Plant, 253 N. C. 493, 117 S. E. (2d) 490 (1960).

Changes of condition occurring during the healing period, and prior to the time of maximum recovery and the permanent disability, if any, found to exist at the end of the period of healing, are not changes of condition within the meaning of this section. Pratt v. Central Upholstery Co., 252 N. C. 716, 115 S. E. (2d) 27 (1960).

Date of Last Payment.—

In accord with 1st paragraph in original. See Baldwin v. Amazon Cotton Mills, 253 N. C. 740, 117 S. E. (2d) 718 (1961).

This section merely fixes a date after which the claim is barred. Ammons v. Z. A. Sneeden's Sons, Inc., 257 N. C. 785, 127 S. E. (2d) 575 (1962).

Failure to assert a change in condition within twelve months is not jurisdictional. Ammons v. Z. A. Sneeden's Sons, Inc., 257 N. C. 785, 127 S. E. (2d) 575 (1962).

And Party May Be Estopped to Rely on It.—Delay for more than one year may be asserted as a plea in bar, but the party interposing and relying on it may be estopped to assert it by inequitable conduct. Ammons v. Z. A. Sneeden's Sons, Inc., 257 N. C. 785, 127 S. E. (2d) 575 (1962).

This section cannot apply, etc.—

This section is not applicable unless a final award has been made. Pratt v. Central Upholstery Co., 252 N. C. 716, 115 S. E. (2d) 27 (1960).

§ 97-48. Receipts relieving employer; payment to minors; when payment of claims to dependents subsequent in right discharges employer.

Cited in Hill v. Cahoon, 252 N. C. 295, 113 S. E. (2d) 569 (1960); Pratt v. Central Upholstery Co., 252 N. C. 716, 115 S. E. (2d) 27 (1960).

§ 97-52. Occupational disease made compensable; "accident" defined.

Special Provisions Relating to Asbestosis and Silicosis.—

The clear intent of § 97-61.6 to provide compensation for death occurring within 350 weeks from the date of last exposure to silicosis if the employee was at the time of death receiving compensation for disablement due to silicosis, even though the death does not result from silicosis, must be given effect notwithstanding § 97-2, subdivision (6) and (10), and this section, since the specific provisions relating to silicosis, which were enacted because of the peculiar course of the disease, must be construed as an exception to the general tenor of the Compensation Act to provide com-

pensation for death only if it results from an accident arising out of and in the course of the employment. Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.—The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this article:

(1) Anthrax.
(2) Arsenic poisoning.
(3) Brass poisoning.
(4) Zinc poisoning.
(5) Manganese poisoning.
(6) Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least thirty days in the preceding twelve months' period, and; provided further only the employer in whose employment such employee was last injuriously exposed shall be liable.
(7) Mercury poisoning.
(8) Phosphorous poisoning.
(9) Poisoning by carbon bisulphide, methanol, naphtha or volatile halogenated hydrocarbons.
(10) Chrome ulceration.
(11) Compressed-air illness.
(12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrolbenzol, anilin, and others).
(13) Infection or inflammation of the skin, eyes, or other external contact surfaces or oral or nasal cavities or any other internal or external organ or organs of the body due to irritating oils, cutting compounds, chemical dust, liquids, fumes, gases or vapors, and any other materials or substances.

The provisions of this subdivision shall not apply to cases of occupational diseases not included in said subdivision prior to July 1, 1963, unless the last exposure in an occupation subject to the hazards of such disease occurred on or after July 1, 1963.

(14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
(15) Radium poisoning or disability or death due to radioactive properties of substances or to roentgen rays, X-rays or exposure to any other source of ionizing radiation; provided, however, that the disease under this subdivision shall be deemed to have occurred on the date that disability or death shall occur by reason of such disease.
(16) Blisters due to use of tools or appliances in the employment.
(17) Bursitis due to intermittent pressure in the employment.
(18) Miner's nystagmus.
(19) Bone felon due to constant or intermittent pressure in employment.
(20) Synovitis, caused by trauma in employment.
(21) Tenosynovitis, caused by trauma in employment.
(22) Carbon monoxide poisoning.
(23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
(24) Asbestosis.
(25) Silicosis.
(26) Psittacosis.
(27) Undulant fever.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quan-

tity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals. (1935, c. 123; 1949, c. 1078; 1953, c. 1112; 1955, c. 1026, s. 10; 1957, c. 1396, s. 6; 1963, c. 553, s. 1; c. 965.)

Editor's Note.—

The first 1963 amendment rewrote subdivision (15). The second 1963 amendment, effective July 1, 1963, inserted "or any other internal or external organ or organs of the body" in the first paragraph of subdivision (13) and added the second paragraph of subdivision (13).

§ 97-54. "Disablement" defined.

When Disablement Deemed to Have Occurred.—The time when disablement is deemed to have occurred depends upon the factual situation under consideration. Fetner v. Rocky Mount Marble & Granite Works, 251 N. C. 296, 111 S. E. (2d) 324 (1959).

Cited in Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

§ 97-57. Employer liable.

Liability of Insurance Carrier.—

Before the 1957 amendment to this section, where an employee became disabled from asbestosis while working for a single employer, but different insurers were on the risk during the employee's last thirty days exposure to the hazards of the disease, the carrier last on the risk, even though it was on the risk for only the last five days the employee worked, was solely liable for the award under a provision of the policy contracts that each policy should apply only to injury by disease of which the last day of the last exposure occurred during the policy period. Hartsell v. Thermoid Co., 249 N. C. 527, 107 S. E. (2d) 115 (1959).

Findings Required to Support Award for Silicosis.—To support an award to one suffering from silicosis, the Industrial Commission must find, inter alia, that the employee had been exposed to the hazards of silicosis for the period provided by this section and that the employee's work in the State must have exposed him to the inhalation of silicia dust for the further period prescribed by § 97-63. Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

This section creates an irrebuttable presumption, a presumption of law. The last day of work was the date of disablement and the last 30 days of work was the period of last injurious exposure. The Commission may not arbitrarily select any 30 days of employment, other than the last 30 days, within the seven months' period for convenience or protection of any of the parties, even if there is some evidence which may be construed to support such selection. Fetner v. Rocky Mount Marble & Granite Works, 251 N. C. 296, 111 S. E. (2d) 324 (1959).

§ 97-58. Claims for certain diseases restricted; time limit for filing claims.

(c) The right to compensation for occupational disease shall be barred unless a claim be filed with the Industrial Commission within one year after death, disability, or disablement as the case may be. Provided, however, that the right to compensation for radiation injury, disability or death shall be barred unless a claim is filed within one (1) year after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 6; 1963, c. 553, s. 2.)

Editor's Note.—

The 1963 amendment added the proviso to subsection (c). As the other subsections were not changed by the amendment they are not set out.

Cited in Fetner v. Rocky Mount Marble & Granite Works, 251 N. C. 296, 111 S. E. (2d) 324 (1959).

§ 97-60. Examination of employees by advisory medical committee; designation of industries with dust hazards.

Cited in Fetner v. Rocky Mount Marble & Granite Works, 251 N. C. 296, 111 S. E. (2d) 324 (1959); Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-61.1. First examination of and report on employee having asbestosis or silicosis.

Applied in Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

Cited in Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-61.2. Filing of first report; right of hearing; effect of report as testimony.—The advisory medical committee shall file its report in triplicate with the Industrial Commission, which shall send one copy thereof to the claimant and one copy thereof to the employer by registered mail or certified mail. Unless within thirty days from receipt of the copy of said report the claimant and employer, or either of them, shall request the Industrial Commission in writing to set the case for hearing for the purpose of examining and cross-examining the members of the advisory medical committee respecting the report of said committee, and for the purpose of introducing additional testimony, said report shall become a part of the record of the case and shall be accepted by the Industrial Commission as expert medical testimony to be considered as such and in connection with all the evidence in the case in arriving at its decision. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1963, c. 450, s. 5.)

Editor's Note. — The 1963 amendment inserted the words "or certified mail" at the end of the first sentence.

§ 97-61.3. Second examination and report.—As soon as practicable after the expiration of one year following the initial examination by the advisory medical committee and when ordered by the Industrial Commission, the employee shall again appear before the advisory medical committee, at least one of whom shall conduct the examination, and the member or members of the advisory medical committee conducting the examination shall forward the X-rays and findings to the member or members of the committee not present for the physical examination. Within thirty days after the completion of the examination, the advisory medical committee shall make a written report to the Industrial Commission signed by all of its members, setting forth any change since the first report in the employee's condition which is due to asbestosis or silicosis, said report to be filed in triplicate with the Industrial Commission, which shall send one copy thereof to the claimant, and one copy to the employer by registered mail or certified mail. The claimant and employer, or either of them, shall have the right only at the final hearing provided for in G. S. 97-61.4 to examine or cross-examine the members of the advisory medical committee respecting the second report of the committee. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1959, c. 863, s. 2.)

Editor's Note.—The 1959 amendment inserted "or certified mail" in line fourteen.

Applied in Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

Cited in Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 235 (1963).

§ 97-61.4. Third examination and report.—As soon as practicable after the expiration of two years from the first examination and when ordered by the Industrial Commission, the employee shall appear before the advisory medical committee, or at least two of them, for final X-rays and physical examination. Upon completion of this examination and within thirty days, the advisory medical committee shall make a written report setting forth:

(1) The X-rays and clinical procedures used by the committee.

(2) To what extent, if any, has the damage to the employee's lungs due to asbestosis or silicosis changed since the first examination.

(3) The opinion of the committee, expressed in percentages, with respect to the extent of impairment of the employee's ability to earn in the same or any other employment the wages which the employee was

receiving at the time of his last injurious exposure to asbestosis or silicosis.

(4) Any other matter deemed pertinent by the committee.

Said report shall be filed in triplicate with the Industrial Commission which shall send one copy thereof to the claimant and one copy to the employer by registered mail or certified mail. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; 1959, c. 863, s. 3.)

Editor's Note.—The 1959 amendment added the words "or certified mail" at the end of the section.

Applied in Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

Cited in Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-61.5. Hearing after first examination and report; removal of employee from hazardous occupation; compensation upon removal from hazardous occupation.

(b) If the Industrial Commission finds at the first hearing that the employee has either asbestosis or silicosis or if the parties enter into an agreement to the effect that the employee has silicosis or asbestosis, it shall by order remove the employee from any occupation which exposes him to the hazards of asbestosis or silicosis, and if the employee thereafter engages in any occupation which exposes him to the hazards of asbestosis or silicosis without having obtained the written approval of the Industrial Commission as provided in G. S. 97-61.7, neither he, his dependents, personal representative nor any other person shall be entitled to any compensation for disablement or death resulting from asbestosis or silicosis; provided, that if the employee is removed from the industry the employer shall pay or cause to be paid as in this subsection provided to the employee affected by such asbestosis or silicosis a weekly compensation equal to 60% of his average weekly wages before removal from the industry, but not more than thirty-seven dollars and fifty cents ($37.50) or less than ten dollars ($10.00) a week, which compensation shall continue for a period of 104 weeks. Payments made under this subsection shall be credited on the amounts payable under any final award in the cause entered under G. S. 97-61.6. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1217; c. 1396, s. 8; 1963, c. 604, s. 6.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted near the end of subsection (b) "thirty-seven dollars and fifty cents ($37.50)" for "thirty-five dollars ($35.00)." As subsection (a) was not changed it is not set out.

Compensation Where Employee's Condition Is Complicated by Tuberculosis.—Where an employee is ordered to abstain from employment in an industry having the hazards of silica dust and directed to report for second and third medical examinations under §§ 97-61.3 and 97-61.4, it is proper that he be awarded the compensation provided by subsection (b) of this section without consideration of the fact that his condition was complicated by pulmonary tuberculosis, since the total amount of compensation is to be determined on the hearing after the third medical report as provided in § 97-61.6, at which time consideration should be given to the tubercular condition in accordance with § 97-65. Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

Stated in Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-61.6. Hearing after third examination and report; compensation for disability and death from asbestosis or silicosis.—After receipt by the employer and employee of the advisory medical committee's third report, the Industrial Commission, unless it has approved an agreement between the employee and employer, shall set a final hearing in the cause, at which it shall receive all competent evidence bearing on the cause, and shall make a final disposition of the case, determining what compensation, if any, the employee is entitled to receive in addition to the 104 weeks already received.

Where the incapacity for work resulting from asbestosis or silicosis is found to be total, the employer shall pay, or cause to be paid, to the injured employee

during such total disability a weekly compensation equal to sixty per centum (60%) of his average weekly wages, but not more than thirty-seven dollars and fifty cents ($37.50), nor less than ten dollars ($10.00), a week; and in no case shall the period covered by such compensation be greater than 400 weeks, nor shall the total amount of all compensation exceed twelve thousand dollars ($12,000.00).

When the incapacity for work resulting from asbestosis or silicosis is partial, the employer shall pay, or cause to be paid, to the affected employee, a weekly compensation equal to sixty per centum (60%) of the difference between his average weekly wages at the time of his last injurious exposure, and the average weekly wages which he is able to earn thereafter, but not more than thirty-seven dollars and fifty cents ($37.50) a week, and provided that the total compensation so paid shall not exceed a period of 196 weeks, in addition to the 104 weeks for which the employee has already been compensated.

Provided, however, should death result from asbestosis or silicosis within two years from the date of last exposure, or should death result within 350 weeks from the date of last exposure and while the employee is entitled to compensation for disablement due to asbestosis or silicosis, either partial or total, then in either of these events, the employer shall pay, or cause to be paid, by one of the methods set forth in G. S. 97-38 a total compensation which, when added to the payments already made for partial or total disability to time of death, shall not exceed twelve thousand dollars ($12,000.00) including burial expenses. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1217; 1963, c. 604, s. 7.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted in the second and third paragraphs "thirty-seven dollars and fifty cents ($37.50)" for "thirty-five dollars ($35.00)." It also substituted "twelve thousand dollars ($12,000.00)" for "ten thousand dollars ($10,000.00)" near the end of the second and fourth paragraphs.

Purpose of Section. — Because of the difficulty of effecting a cure and the length of time necessary to ascertain the extent of the disability, this section fixes a time in the future when the total amount of compensation will be determined. Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

The language of the last paragraph of this section is clear, positive and understandable. When the language of a statute is plain and free from ambiguity, expressing a single, definite and sensible meaning, that meaning is conclusively presumed to be the meaning which the legislature intended, and the statute must be interpreted accordingly. Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

The last paragraph of this section provides two conditions under which dependents of a deceased employee, who had silicosis, are entitled to compensation on account of his death: (1) If death results from silicosis within two years from the date of last exposure, or (2) if death results within 350 weeks from the date of last exposure and while the employee is entitled to compensation for disablement due to silicosis, either partial or total. These conditions are stated in independent clauses of a compound sentence and neither clause is dependent upon the other. Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

When Compensation Allowed Although Death Does Not Result from Silicosis.— Under this section the dependents of a deceased employee are entitled to compensation if the employee dies within 350 weeks from the date of last exposure to silicosis and while he is receiving or is entitled to receive compensation for disability due to silicosis, either partial or total, notwithstanding that the death does not result from silicosis. Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

The clear intent of this section to provide compensation for death occurring within 350 weeks from the date of last exposure if the employee was at the time of death receiving compensation for disablement due to silicosis, even though the death does not result from silicosis, must be given effect notwithstanding §§ 97-2, subdivisions (6) and (10), and 97-52, since the specific provisions relating to silicosis, which were enacted because of the peculiar course of the disease, must be construed as an exception to the general tenor of the Compensation Act to provide compensation for death only if it results from an accident arising out of and in the course of the employment. Davis v. N. C. Granite

Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

Consideration of Fact That Employee Suffers from Tuberculosis.—See note to § 97-65.

§ 97-61.7. Waiver of right to compensation as alternative to forced change of occupation.

Waiver Inapplicable as to Subsequent Employment.—A waiver of an employee's right to compensation for silicosis signed by the employee upon his employment by one employer does not apply to or waive the employee's right to compensation for silicosis upon his subsequent employment by an entirely separate employer. Fetner v. Rocky Mount Marble & Granite Works, 251 N. C. 296, 111 S. E. (2d) 324 (1959).

§ 97-62. "Silicosis" and "asbestosis" defined.

Stated in Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957); Davis v. N. C. Granite Corp., 259 N. C. 672, 131 S. E. (2d) 335 (1963).

§ 97-63. Period necessary for employee to be exposed.

Requirements of This Section and § 97-57 Essential to Award for Silicosis.—See note to § 97-57.

§ 97-65. Reduction of rate where tuberculosis develops.

Time for Making Reduction in Award.—It is at the time of determining the total amount of compensation as provided in § 97-61.6 that the Commission should take into consideration the fact that the employee's condition is complicated by pulmonary tuberculosis and determine in its wisdom the extent to which the provisions of this section should affect the compensation payable to the employee. Pitman v. Carpenter, 247 N. C. 63, 100 S. E. (2d) 231 (1957).

Reduction of Award Rests in Discretion of Commission.—

In accord with original. See Fetner v. Rocky Mount Marble & Granite Works, 251 N. C. 296, 111 S. E. (2d) 324 (1959).

§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.

The Industrial Commission is primarily an administrative agency of the State, etc.—

In accord with original. See Brice v. Robertson House Moving, Wrecking & Salvage Co., 249 N. C. 74, 105 S. E. (2d) 439 (1958).

The Commission is not a court, etc.—

The Industrial Commission is not a court of general jurisdiction. It is an administrative board with quasi-judicial functions and has a special or limited jurisdiction created by statute and confined to its terms. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

In approving settlements the Commission acts in its judicial capacity. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

The jurisdiction of the Industrial Commission may not be enlarged or extended by act or consent of parties, nor may jurisdiction be conferred by agreement or waiver. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

The Commission may not ex mero motu institute a proceeding. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

§ 97-79. Offices and supplies; deputies with power to subpoena witnesses and to take testimony; meetings; hearings.

View of Premises, etc.—

See also Rewis v. New York Life Ins. Co., 226 N. C. 325, 38 S. E. (2d) 97 (1946).

§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.

Rules promulgated by the Commission are for the benefit of the Commission and must be complied with by the parties to a proceeding brought pursuant to the provisions of the Workmen's Compensation Act. Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

Rules Inconsistent with Article.—The

power to make rules may not be exercised when the rule is inconsistent with this article. Evans v. Asheville Citizens Times Co., 246 N. C. 669, 100 S. E. (2d) 75 (1957), holding that Rule XVI of the Commission was inconsistent with § 97-30.

Determination of Jurisdiction Is First Order of Business.—In every proceeding before the Commission determination of jurisdiction is the first order of business. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

Basis of Facts Found. — Determinative facts upon which rights of parties are made to rest must be found from judicial admissions made by the parties, facts agreed, stipulations entered into and noted at the hearing, and evidence offered in open court, after all parties have been given full opportunity to be heard. Recourse may not be had to records, files, evidence, or data not thus presented to the court. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

Quoted in Pratt v. Central Upholstery Co., 252 N. C. 716, 115 S. E. (2d) 27 (1960).

Cited in McGinnis v. Old Fort Finishing Plant, 253 N. C. 493, 117 S. E. (2d) 490 (1960).

§ 97-82. Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval.

When Jurisdiction of Commission Invoked.—The jurisdiction of the Commission is invoked either when a claim for compensation is filed or a voluntary settlement is submitted for approval. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

Commission Acts in Judicial Capacity.—In approving settlements the Commission acts in a judicial capacity. Letterlough v. Atkins, 258 N. C. 166, 128 S. E. (2d) 215 (1962).

Interlocutory Award.—The approval by the Industrial Commission of an agreement of the parties for compensation was not, under the circumstances, a final award, but an interlocutory award, and the Industrial Commission retained jurisdiction to enter a final award upon the filing of a full and complete medical report. Pratt v. Central Upholstery Co., 252 N. C. 716, 115 S. E. (2d) 27 (1960).

§ 97-83. In event of disagreement, Commission is to make award after hearing.

Cross Reference.—See note to § 97-82.

Determination of Conflicting Claims to Compensation Already Paid.—While the Industrial Commission has jurisdiction to amend its award in regard to persons entitled to receive compensation awarded by it, it has no jurisdiction to enter a judgment in favor of a party to recover compensation theretofore paid to another, but the superior court has jurisdiction to determine conflicting claims of persons in regard to compensation which has already been paid. Hill v. Cahoon, 252 N. C. 295, 113 S. E. (2d) 569 (1960).

Cited in Brice v. Robertson House Moving, Wrecking & Salvage Co., 249 N. C. 74, 105 S. E. (2d) 439 (1958).

§ 97-84. Determination of disputes by Commission or deputy.

Fact-Finding Body.—

In accord with 1st paragraph in original. See Brice v. Robertson House Moving, Wrecking & Salvage Co., 249 N. C. 74, 105 S. E. (2d) 439 (1958).

Specific Findings of Fact Required.—

Specific findings of fact by the Industrial Commission are required. These must cover the crucial questions of fact upon which plaintiff's right to compensation depends. State v. Haywood Electric Membership Corp., 260 N. C. 59, 131 S. E. (2d) 865 (1963).

Agreement Approved by Commission Is as Binding as Award.—An agreement for the payment of compensation when approved by the Commission is as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed on appeal. Neal v. Clary, 259 N. C. 163, 130 S. E. (2d) 39 (1963).

§ 97-85. Review of award.—If application is made to the Commission within seven days from the date when notice of the award shall have been given, the full Commission shall review the award, and, if good ground be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award: Provided, however, when appli-

cation is made for review of an award, and such an award has been heard and determined by a commissioner of the North Carolina Industrial Commission, the commissioner who heard and determined the dispute in the first instance, as specified by G. S. 97-84, shall be disqualified from sitting with the full Commission on the review of such award, and the chairman of the Industrial Commission shall designate a deputy commissioner to take such commissioner's place in the review of the particular award. The deputy commissioner so designated, along with the two other commissioners, shall compose the full Commission upon review. (1929, c. 120, s. 59; 1963, c. 402.)

Editor's Note. — The 1963 amendment added the proviso to this section.

Continuing Jurisdiction of Commission. —The Industrial Commission has, within the limits prescribed by statute, continuing jurisdiction, and hence as an administrative agency empowered to hear evidence and render awards thereon affecting the rights of workers, has and ought to have authority to make its own records speak the truth in order to protect its own decrees from mistake of material facts and the blight of fraud; therefore when the full Commission finds and asserts that the award was not made in compliance with the provisions of the statute, then manifestly the Commission is entitled to vacate an award which the Commission itself admits was contrary to law. McDowell v. Kure Beach, 251 N. C. 818, 112 S. E. (2d) 390 (1960).

The Commission is the fact-finding body under the Workmen's Compensation Act. The finding of facts is one of the primary duties of the Commission. Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

Rules promulgated by the Commission do not limit the power of the Commission to review, modify, adopt, or reject the findings of fact found by a deputy commissioner or by an individual member of the Commission when acting as a hearing commissioner. Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

Power to Modify or Strike Out Findings of Fact.—The power to review the evidence, reconsider it, receive evidence, rehear the parties or their representatives, and, if proper, to amend the award, carries with it the power to modify or strike out findings of fact made by the deputy commissioner or hearing commissioner if in the judgment of the Commission such finding is not proper. Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

Judicial Review of Findings of Fact of Hearing Commissioner.—A finding of fact by a hearing commissioner or by a deputy commissioner never reaches the superior court or the Supreme Court unless it has been affirmed by the Commission. Brewer v. Powers Trucking Co., 256 N. C. 175, 123 S. E. (2d) 608 (1962).

§ 97-86. Award conclusive as to facts; appeal; certified questions of law.—The award of the Commission, as provided in § 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in § 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within thirty days from the date of such award, or within thirty days after receipt of notice to be sent by registered mail or certified mail of such award, but not thereafter, appeal from the decision of said Commission to the superior court of the county in which the alleged accident happened, or in which the employer resides or has his principal office, for errors of law, under the same terms and conditions as govern appeals in ordinary civil actions: Provided the Commission shall have sixty days after receipt of notice of appeal, properly served on the opposing party and the Industrial Commission, within which to prepare and furnish to the appellant or his attorney a certified transcript of the record in the case for filing in superior court. The Commission, of its own motion, may certify questions of law to the Supreme Court, for decision and determination by the said Court. In case of an appeal from the decision of the Commission, or of a certification by said Commission of questions of law, to the Supreme Court, said appeal or certification shall operate as a supersedeas, and no employer shall be required to make payment of the award involved in said appeal or certification until the questions at issue therein shall

have been fully determined in accordance with the provisions of this article: Provided, however, that if the employer is a noninsurer, then appeal by such employer shall not act as a supersedeas and the plaintiff in such case shall have the same right to issue execution or to satisfy the award from the property of the employer pending the appeal as obtains to the successful party in an action in the superior court. (1929, c. 120, s. 60; 1947, c. 823; 1957, c. 1396, s. 9; 1959, c. 863, s. 4.)

Editor's Note.—

The 1959 amendment inserted "or certified mail" following "registered mail" in line five.

For a note on "jurisdictional fact" review by superior courts, see 37 N. C. Law Rev. 219.

Scope of Review.—

It is the duty of the court to determine whether, in any reasonable view of the evidence, it is sufficient to support the critical findings necessary to permit an award of compensation. Keller v. Electric Wiring Co., Inc., 259 N. C. 222, 130 S. E. (2d) 342 (1963).

In passing upon an appeal from an award of the Industrial Commission in a proceeding coming within the purview of the Workmen's Compensation Act, the superior court is limited in its inquiry to these two questions of law: (1) Whether or not there was any competent evidence before the Commission to support its findings of fact; and (2) whether or not findings of fact of the Commission justify its legal conclusions and decision. The superior court cannot consider the evidence in the proceeding in any event for the purpose of finding the facts for itself. If the findings of fact of the Industrial Commission are supported by competent evidence and are determinative of all the questions at issue in the proceeding, the court must accept such findings as final truth and merely determine whether or not they justify the legal conclusions and decision of the Commission. But if the findings of fact of the Industrial Commission are insufficient to enable the court to determine the rights of the parties upon the matters in controversy, the proceeding must be remanded to the Commission for proper findings. Brice v. Robertson House Moving, Wrecking & Salvage Co., 249 N. C. 74, 105 S. E. (2d) 439 (1958).

An Appeal from the Industrial Commission Is Permitted Only on Matters of Law.—

The award of the Industrial Commission is conclusive and binding as to all questions of fact, and the appeal to the superior court is for error of law only. Ballenger Paving Co. v. North Carolina State Highway Comm., 258 N. C. 691, 129 S. E. (2d) 245 (1963).

On appeal from the Industrial Commission to the superior court, review is limited to questions of law. Whether the record contains any competent evidence to support the facts as found and whether the facts found are sufficient to support the conclusions of the Commission are questions of law. Moore v. Adams Electric Co., Inc., 259 N. C. 735, 131 S. E. (2d) 356 (1963).

Authority to Find Facts Is Vested Exclusively in Industrial Commission.—The authority to find facts necessary for an award pursuant to the provisions of the Workmen's Compensation Act is vested exclusively in the Industrial Commission. Moore v. Adams Electric Co., Inc., 259 N. C. 735, 131 S. E. (2d) 356 (1963).

The findings of fact of the Industrial Commission, etc.—

In accord with 4th paragraph in original. See McGinnis v. Old Fort Finishing Plant, 253 N. C. 493, 117 S. E. (2d) 490 (1960); Osborne v. Colonial Ice Co., 249 N. C. 387, 106 S. E. (2d) 573 (1959).

In accord with 7th paragraph in original. See Champion v. Hardin-Dixon Tractor Co., 246 N. C. 691, 99 S. E. (2d) 917 (1957); Humphrey v. Quality Cleaners & Laundry, 251 N. C. 47, 110 S. E. (2d) 467 (1959); Osborne v. Colonial Ice Co., 249 N. C. 387, 106 S. E. (2d) 573 (1959); Sandy v. Stackhouse, Inc., 258 N. C. 194, 128 S. E. (2d) 218 (1962); Keller v. Electric Wiring Co., Inc., 259 N. C. 222, 130 S. E. (2d) 342 (1963).

The courts are bound by the Commission's findings if supported by competent evidence, even though the evidence would have supported a different or contrary finding. Osborne v. Colonial Ice Co., 249 N. C. 387, 106 S. E. (2d) 573 (1959).

A finding by the Industrial Commission, if supported by competent evidence, is binding on the superior court judge who reviews the case and is likewise binding on the Supreme Court on the appeal. Osborne v. Colonial Ice Co., 249 N. C. 387, 106 S. E. (2d) 573 (1959).

Whether an accident was proximately caused by the violation of a safety statute is a question for the fact-finding body. Osborne v. Colonial Ice Co., 249 N. C. 387, 106 S. E. (2d) 573 (1959).

Procedure Provided by Section Must Be Followed. — When the applicable statute provides an appeal from an administrative agency, the procedure provided in the act must be followed. McDowell v. Kure Beach, 251 N. C. 818, 112 S. E. (2d) 390 (1960).

Hence, a writ of certiorari cannot be used as a substitute for an appeal either before or after the time for appeal has expired. McDowell v. Kure Beach, 251 N. C. 818, 112 S. E. (2d) 390 (1960).

Remand Where Commission Fails to Find Facts.—

Where the Industrial Commission failed to find the facts necessary for a determination of the rights of the parties, the judgment of the superior court was reversed in order that it could remand to the Industrial Commission with directions to make necessary findings of fact on which the rights of the parties could be determined. Moore v. Adams Electric Co., Inc., 259 N. C. 735, 131 S. E. (2d) 356 (1963).

Cited in Pratt v. Central Upholstery Co., 252 N. C. 716, 115 S. E. (2d) 27 (1960).

§ 97-87. Agreements approved by Commission or awards may be filed as judgments; discharge or restoration of lien.

Applied in Pratt v. Central Upholstery Co., 252 N. C. 716. 115 S. E. (2d) 27 (1960).

§ 97-88. Expenses of appeals brought by insurers.

Award of Counsel's Fees Not Error.— Affirmance by the full Commission of the hearing commissioner's findings of fact, conclusions, and award, and approval of a fee of $150.00 for claimant's counsel, in addition to the fee for claimant's counsel approved by the hearing commissioner, and an order that such fee be assessed against defendant as a part of the costs of the appeal in accordance with the provisions of this section was not error. Bass v. Mecklenburg County, 258 N. C. 226, 128 S. E. (2d) 570 (1962).

§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.— (a) Fees for attorneys and physicians and charges of hospitals for services and charges for nursing services, medicines and sick travel under this article shall be subject to the approval of the Commission; but no physician shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Industrial Commission in connection with the case.

(b) Any person (i) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or such court, or (ii) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not more than $500 or by imprisonment not to exceed one year, or by both such fine and imprisonment.

(c) If an attorney has an agreement for fee or compensation under this article, he shall file a copy or memorandum thereof with the hearing officer or Commission prior to the conclusion of the hearing. If the agreement is not considered unreasonable, the hearing officer or Commission shall approve it at the time of rendering decision. If the agreement is found to be unreasonable by the hearing officer or Commission, the reasons therefor shall be given and what is considered to be a reasonable fee allowed. If within five (5) days after receipt of notice of such fee allowance, the attorney shall file notice of appeal to the full Commission, the full Commission shall hear the matter and determine whether or not the attorney's agreement as to a fee or the fee allowed is unreasonable. If the full Commission is of the opinion that such agreement or fee allowance is unreasonable and so finds, then the attorney may, by filing written notice of appeal within ten (10) days after receipt of such action by the full Commission, appeal to the resident judge of the superior court or the judge

holding the courts of the district of or in the county in which the cause of action arose or in which the claimant resides; and upon such appeal said judge shall consider the matter and determine in his discretion the reasonableness of said agreement or fix the fee and direct an order to the Commission following his determination therein. The Commission shall, within twenty (20) days after receipt of notice of appeal from its action concerning said agreement or allowance, transmit its findings and reasons as to its action concerning such agreement or allowance to the judge of the superior court designated in the notice of appeal. In all other cases where there is no agreement for fee or compensation, the attorney or claimant may, by filing written notice of appeal within five (5) days after receipt of notice of action of the full Commission with respect to attorneys' fees, appeal to the resident judge of the superior court or the judge holding the courts of the district of the county in which the cause arose or in which the claimant resides; and upon such appeal said judge shall consider the matter of such fee and determine in his discretion the attorneys' fees to be allowed in the cause. The Commission shall, within twenty (20) days after notice of appeal has been filed, transmit its findings and reasons as to its action concerning such fee or compensation to the judge of the superior court designated in the notice of appeal; provided that the Commission shall in no event have any jurisdiction over any attorneys' fees in any third-party action.

(d) Provided, that nothing contained in this section shall prevent the collection of such reasonable fees of physicians and charges for hospitalization as may be recovered in an action, or embraced in settlement of a claim, against a third-party tort-feasor as described in G. S. 97-10. (1929, c. 120, s. 64; 1955, c. 1026, s. 4; 1959, cc. 1268, 1307.)

Editor's Note.—

The first 1959 amendment added subsection (c), and the second 1959 amendment added subsection (d).

G. S. 97-10, cited at the end of subsection (d) has been repealed and G. S. 97-10.1 to G. S. 97-10.3 inserted in lieu thereof.

Review of Commission's Decision as to Attorney's Fee. — Before the first 1959 amendment, which added subsection (c) to this section, it was held that the provisions of this section that the Industrial Commission approve fees for attorneys implied the exercise of discretion and judgment by the Commission, and that the superior court on appeal was without power to hear evidence upon the question and strike out the fee allowed by the Commission and approve a fee in a different amount. Brice v. Robertson House Moving, Wrecking & Salvage Co., 249 N. C. 74, 105 S. E. (2d) 439 (1958).

§ 97-91. Commission to determine all questions.

Jurisdiction of Commission Exclusive.— In an action instituted in the superior court under the Declaratory Judgment Act or otherwise, when the pleadings disclose an employee-employer relationship exists so as to make the parties subject to the provisions of the Workmen's Compensation Act, dismissal is proper, for the Industrial Commission has exclusive jurisdiction in such cases. Cox v. Pitt County Transp. Co., Inc., 259 N. C. 38, 129 S. E. (2d) 589 (1963).

The Declaratory Judgment Act may not be used to determine whether or not the employer's insurance carrier is entitled to the right of subrogation against the funds received from the third party tort-feasor, under the provisions of § 97-10.2, since the Industrial Commission has the exclusive original jurisdiction to determine the question. Cox v. Pitt County Transp. Co., Inc., 259 N. C. 38, 129 S. E. (2d) 589 (1963).

§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits.

Quoted in Ashe v. Barnes, 255 N. C. 310, 121 S. E. (2d) 549 (1961).

§ 97-94. Employers required to give proof within 30 days that they have complied with preceding section; fine for not keeping liability insured; review; liability for compensation; failure to secure payment of compensation a misdemeanor.

(c) Any employer required to secure the payment of compensation under this article who wilfully refuses or neglects to secure such compensation shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1929, c. 120, s. 68; 1945, c. 766; 1963, c. 499.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, added subsection (c). As only subsection (c) was affected by the amendment the rest of the section is not set out.

§ 97-98. Policy must contain agreement promptly to pay benefits; continuance of obligation of insurer in event of default.

Under this section, an employee has the right to enforce the insurance contract made for his benefit. Hartsell v. Thermoid Co., 249 N. C. 527, 107 S. E. (2d) 115 (1959).

§ 97-99. Law written into each insurance policy; form of policy to be approved by Insurance Commissioner; cancellation; single catastrophe hazards.—(a) Every policy for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this article. No corporation, association, or organization shall enter into any such policy of insurance unless its form shall have been approved by the Insurance Commissioner. No policy form shall be approved unless the same shall provide a thirty-day prior notice of an intention to cancel same by the carrier to the insured by registered mail or certified mail. This shall not apply to the expiration date shown in the policy. The carrier may cancel the policy for nonpayment of premium on ten days' written notice to the insured, and the insured may cancel the policy on ten days' written notice by registered mail or certified mail to the carrier.

(b) This article shall not apply to policies of insurance against loss from explosion of boilers or flywheels or other similar single catastrophe hazards: Provided, that nothing herein contained shall be construed to relieve the employer from liability for injury or death of an employee as a result of such explosion or catastrophe. (1929, c. 120, s. 72; 1945, c. 381, s. 1; 1959, c. 863, s. 5.)

Editor's Note.—The 1959 amendment inserted the words "or certified mail" in subsection (a).

All relevant provisions of the Workmen's Compensation Act become a part of each policy of insurance procured pursuant to the Act. Hartsell v. Thermoid Co., 249 N. C. 527, 107 S. E. (2d) 115 (1959).

Applied in Moore v. Adams Electric Co., Inc., 259 N. C. 735, 131 S. E. (2d) 356 (1963).

§ 97-100. Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; returned or canceled premiums; reports of premiums collected; wrongful or fraudulent representation of carrier punishable as misdemeanor; notices to carrier; employer who carries own risk shall make report on payroll.

(j) Every employer carrying his own risk under the provisions of § 97-93 shall, under oath, report to the Commission his payroll, subject to the provisions of this article. Such report shall be made in form prescribed by the Commission, and at the times herein provided for premium reports by insurer. The Commission shall assess against such payroll a maintenance fund tax computed by taking such per cent of the basic premiums charged against the same or most similar industry or business taken from the manual insurance rate then in force in this

State as is assessed in the Revenue Act against the insurance carriers for premiums collected on compensation insurance policies. Receipts collected under this subsection shall be deposited to the credit of the State Treasurer as general fund revenue. (1929, c. 120, s. 73; 1931, c. 274, s. 13; 1947, c. 574; 1961, c. 833, s. 13.)

Editor's Note.—

The 1961 amendment, effective July 1, 1961, added the last sentence to subsection (j). As only this subsection was affected by the amendment the rest of the section is not set out.

Article 2.

Compensation Rating and Inspection Bureau.

§ 97-104.2. General provisions.

This section is intended to prevent rebating and an unlawful discrimination and favoritism by insurance companies. Where there is nothing in the record suggestive of an intent by either party to violate the cited statutes, an otherwise valid compromise will not be avoided solely on the ground that it is contrary to public policy. There must be some fact on which the asserted invalidity can rest. Fidelity & Casualty Co. of New York v. Nello L. Teer Co., 179 F. Supp. 538 (1960), quoting Fidelity & Casualty Co. of New York v. Nello L. Teer Co., 250 N. C. 547, 109 S. E. (2d) 171 (1959).

Agreement as to Unearned Premiums Not Contrary to Section.—Where dispute between insurer and insured as to the amount of premiums due is not based upon controversy as to the rates but solely as to credits for unearned premiums and overpayment of premiums, a compromise settlement cannot be avoided on the ground that it was contrary to this section, since such compromise does not rest upon a charge of premiums at rates less than those prescribed by statute. Fidelity & Casualty Co. of New York v. Nello L. Teer Co., 250 N. C. 547, 109 S. E. (2d) 171 (1959).

Chapter 100.

Monuments, Memorials and Parks.

Article 5.

Flagpoles and Display of Flags in State Parks.

Sec.

100-17. Flagpole to be erected in each State park.

Sec.

100-18. Display of flags.

100-19. Donation of flagpoles.

Article 1.

Memorials Commission.

§ 100-8. Memorials to persons within twenty-five years of death; acceptance of commemorative funds for useful work. — No monument, statue, tablet, painting, or other article or structure of a permanent nature intended primarily to commemorate any person or persons shall be purchased from State funds or shall be placed in or upon or allowed to extend over State property within twenty-five years after the death of the person or persons so commemorated: Provided, nevertheless, that nothing in this article shall be interpreted as prohibiting the acceptance of funds by State agencies or institutions from individuals or societies who wish to commemorate some person or persons by providing funds for educational, health, charitable, or other useful work. The agency or institution to which such funds are offered for memorial enterprises shall exercise its discretion as to the acceptance and expenditure of such funds. Nothing in this article shall be interpreted as prohibiting the erection on the lands of the Cliffs of the Neuse State Park an appropriate tablet or plaque honoring the life and memory of the late Lionel Weil of Wayne County. Nothing in this

article shall be interpreted as prohibiting the erection on the lands of the Morrow Mountain State Park an appropriate tablet or plaque honoring the life and memory of the late James McKnight Morrow of Stanly County. Nothing in this article shall be interpreted as prohibiting the erection on the lands of the Cliffs of the Neuse State Park an appropriate tablet or plaque, of such size and containing such language, as may be agreed upon by the donors and Director of State Parks, honoring the Whitfield heirs for their contributions to the establishment of the said park. (1941, c. 341, s. 8; 1957, c. 181; 1961, c. 976; 1963, c. 1128.)

Editor's Note.— The 1961 amendment added the next-to-last sentence. The 1963 amendment added the last sentence.

Article 5.

Flagpoles and Display of Flags in State Parks.

§ 100-17. Flagpole to be erected in each State park.—At each of the State parks of North Carolina an adequate flagpole shall be erected, in keeping with the construction of other structures thereupon, upon which flags of the United States of America and the State of North Carolina may be flown. (1963, c. 317, s. 1.)

Editor's Note.—The act inserting this article became effective May 1, 1963.

§ 100-18. Display of flags. — Where personnel are available upon the State parks, the flags of the United States and of the State of North Carolina shall be flown on every Saturday and Sunday and on every State holiday from May 1 to October 1 of each year, in conformity with appropriate national and State policy and procedures concerning the display of the State and federal flag. (1963, c. 317, s. 2.)

§ 100-19. Donation of flagpoles.—Flagpoles at State parks may be donated by donors of the lands upon which State parks are situated, and if such donors express a desire to donate flagpoles, such donations shall be accepted in preference to that of any other individual or group. In the event that the donors of the lands upon which the State parks are situated shall not indicate a desire to donate flagpoles therefor within six (6) months of the date of the passage of this article, donations for flagpoles shall be accepted from individuals or groups who may desire to make such donations and erect the said flagpoles in keeping with State park regulations. (1963, c. 317, s. 3.)

Chapter 101.

Names of Persons.

§ 101-2. Procedure for changing name; petition; notice. — A person who wishes, for good cause shown, to change his name must file his application before the clerk of the superior court of the county in which he lives, having first given ten days' notice of the application by publication at the courthouse door.

Applications to change the name of minor children may be filed by their parent or parents or guardian or next friend of such minor children, and such applications may be joined in the application for a change of name filed by their parent or parents: Provided nothing herein shall be construed to permit one parent to make such application on behalf of a minor child without the consent of the other parent of such minor child if both parents be living, except that a minor who has reached the age of 16 years, upon proper application to the clerk may change his or her name, with the consent of the parent who has custody

of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. Provided, further, that a change of parentage or the addition of information relating to parentage on the birth certificate of any person shall be made pursuant to G. S. 130-64.1.

Notwithstanding any other provisions of this section, the consent of a parent who has abandoned a minor child shall not be required if there is filed with the clerk a copy of an order of a court of competent jurisdiction adjudicating that such parent has abandoned such minor child. In the event that a court of competent jurisdiction has not therefore declared the minor child to be an abandoned child, then on written notice of not less than ten days to the parent alleged to have abandoned the child, by registered or certified mail directed to such parent's last known address, the clerk of superior court is hereby authorized to determine whether an abandonment has taken place. If said parent denies that an abandonment has taken place, this issue of fact shall be determined as provided in G. S. 1-273, and if abandonment is determined, then the consent of said parent shall not be required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk. (1891, c. 145; Rev., s. 2147; C. S., s. 2971; 1947, c. 115; 1953, c. 678; 1955, c. 951, s. 3; 1957, c. 1442; 1959, c. 1161, s. 7.)

Editor's Note.— The 1959 amendment substituted "G. S. 130-64.1" in lieu of "G. S. 130-94" at the end of the second paragraph.

§ 101-4. Proof of good character to accompany petition.—The applicant shall also file with said petition proof of his good character, which proof must be made by at least two citizens of the county who know his standing: Provided, however, proof of good character shall not be required when the application is for the change of name of a child under sixteen (16) years of age. (1891, c. 145; Rev., s. 2148; C. S., s. 2973; 1963, c. 206.)

Editor's Note. — The 1963 amendment added the proviso.

Chapter 102.

Official Survey Base.

§ 102-5: Repealed by Session Laws 1963, c. 783.

§ 102-6. Legality of use in descriptions.—For the purpose of describing the location of any survey station or land boundary corner in the State of North Carolina, it shall be considered a complete, legal, and satisfactory description to define the location of such point or points by means of co-ordinates of the North Carolina Co-ordinate System as described herein. (1963, c. 163, s. 6; c. 783.)

Editor's Note. — The 1963 amendment deleted at the end of this section the words "and within the limitations of § 102-5."

§ 102-10. Prior work. — The system of stations, monuments, traverses, computations, and other work which has been done or is under way in North Carolina by the so-called North Carolina Geodetic Survey, under the supervision of the United States Coast and Geodetic Survey, is, where consistent with the provisions of this chapter, hereby made a part of the North Carolina Co-ordinate System. The surveys, notes, computations, monuments, stations, and

all other work relating to the co-ordinate system, which has been done by said North Carolina Geodetic Survey, under the supervision of and in co-operation with the United States Coast and Geodetic Survey and federal relief agencies, hereby are placed under the direction of, and shall become the property of, the administrative agency. All persons or agencies having in their possession any surveys, notes, computations, or other data pertaining to the aforementioned co-ordinate system, shall turn over to the Department of Conservation and Development such data upon request. (1939, c. 163, s. 10; 1959, c. 1315, s. 1.)

Editor's Note.—The 1959 amendment deleted the words "subject to the agreement of the Federal Works Progress Administration" formerly appearing at the end of this section and added the last sentence.

§ 102-12. Control system map. — The agency shall prepare for publication and cause to be published before July 1, 1962, a map or maps setting forth the location of monuments for both horizontal and vertical control, together with such other pertinent data as the agency may direct for implementation of the North Carolina Co-ordinate System. The agency shall furnish such map or maps to any person or may make such charge as will defray the expense of printing and distribution. It shall be the responsibility of the agency to maintain this map, make revisions as often as necessary to provide up-to-date information and furnish up-to-date copies to the register of deeds of each county in the State. (1959, c. 1315, s. 2.)

§ 102-13. Recording tax. — There shall be applied to each transaction in the transfer of ownership of land, except cemetery lots, and on the execution of rights of way, easements, or leases of land recorded in any county of North Carolina, a recording tax of fifty cents (50¢), such tax to be collected at the time of registration of the instrument by the registrar of deeds from the selling party to the instrument. The county shall retain ten cents (10¢) from each transaction to offset collection cost and shall pay forty cents (40¢) from each transaction into the General Fund of the State. Counties shall maintain daily record of such taxable transactions and shall make payment to the Commissioner of Revenue not later than the 15th of the month following that for which payment is made. (1959, c. 1315, s. 3.)

§ 102-14. Initial operating funds. — There is hereby appropriated the sum of eighty-five thousand two hundred and fifty dollars ($85,250.00) for the fiscal year 1959-60 and seventy-five thousand dollars ($75,000.00) for the fiscal year 1960-61 to the Department of Conservation and Development for organization and operation of the Official Survey Base Division for the biennium 1959-61. Thereafter, operating funds shall be provided from the General Fund in accordance with applicable budgetary procedures. (1959, c. 1315, s. 3.)

Chapter 103.

Sundays and Holidays.

§ 103-4. Dates of public holidays. — The first day of January, the nineteenth day of January, the twenty-second day of February, Easter Monday, the twelfth day of April, the tenth day of May, the twentieth day of May, the thirtieth day of May, the fourth day of July, the first Monday in September, the eleventh day of November, to be known as Veterans Day, Tuesday after the first Monday in November when a general election is held, the day appointed by the Governor as a Thanksgiving Day, and the twenty-fifth day of December of each and every year, are declared to be public holidays; and whenever any such holiday shall fall upon Sunday, the Monday following shall be a public holiday: Provided,

that Easter Monday and the thirtieth day of May shall be holidays for all State and national banks only. (1881, c. 294; Code, s. 3784; 1891, c. 58; 1899, c. 410; 1901, c. 25; Rev., s. 2838; 1907, c. 996; 1909, c. 888; 1919, c. 287; C. S., s. 3959; 1935, c. 212; 1959, c. 1011.)

Editor's Note.—

The 1959 amendment inserted the words "to be known as Veterans Day" in line five.

This section relates to State-wide public holidays. Hardbarger v. Deal, 258 N. C. 31, 127 S. E. (2d) 771 (1962).

Closing of County Clerk's Office on Easter Monday.—When §§ 1-593, 2-24 and 103-5 and this section are construed together, the closing of a county clerk's office on Easter Monday, pursuant to resolution by the board of county commissioners in which Easter Monday was designated a holiday, a plaintiff, if otherwise entitled to commence an action on Easter Monday is entitled to commence the action on the next day the courthouse is open for business. Hardbarger v. Deal, 258 N. C. 31, 127 S. E. (2d) 771 (1962).

§ 103-5. Acts to be done on Sunday or holidays.

Cross References.—

As to closing county clerk's office on Easter Monday, see note to § 103-4.

The institution of a suit is an act "required or permitted to be done in the courthouse," within the meaning of this section. Hardbarger v. Deal, 258 N. C. 31, 127 S. E. (2d) 771 (1962).

Chapter 104.

United States Lands.

ARTICLE 1.

Authority for Acquisition.

§ 104-1. Acquisition of lands for specified purposes authorized; concurrent jurisdiction reserved.

Cited in State v. Burell, 256 N. C. 288, 123 S. E. (2d) 795 (1962), cert. denied 370 U. S. 961, 82 S. Ct. 1621, 8 L. Ed. (2d) 827 (1962).

§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.

Editor's Note.—

For case law survey on jurisdiction over federal enclave, see 41 N. C. Law Rev. 451.

Necessity for Acceptance of Jurisdiction by United States.—This section cedes exclusive jurisdiction to the United States over the land acquired, but this section and the State of North Carolina cannot compel the United States to accept such jurisdiction over an area. State v. Burell, 256 N. C. 288, 123 S. E. (2d) 795 (1962), cert. denied 370 U. S. 961, 82 S. Ct. 1621, 8 L. Ed. (2d) 827 (1962).

When the United States government has not accepted the exclusive jurisdiction over the area ceded by the section, this section is not applicable and the State retains its territorial jurisdiction over the area in question so far as its exercise involves no interference with the carrying out of the federal project, and the trial, conviction and judgment imposed upon a defendant by the State court for the felony of assault with intent to commit rape committed in the ceded area is no such interference. State v. Burell, 256 N. C. 288, 123 S. E. (2d) 795 (1962), cert. denied 370 U. S. 961, 82 S. Ct. 1621, 8 L. Ed. (2d) 827 (1962).

Chapter 104B.

Hurricanes or Other Acts of Nature.

Article 3.

Protection of Sand Dunes along Outer Banks.

§ 104B-3. Damaging or removing without permit.

Stated in Chadwick v. Salter, 254 N. C. 389, 119 S. E. (2d) 158 (1961).

Chapter 104C.

Atomic Energy, Radioactivity and Ionizing Radiation.

Sec.

§ 104C-1. Declaration of policy.—It is hereby declared to be in the best interests of the State:

(1) To adapt its laws and regulations to meet the new and changing conditions in ways that will encourage and support a prudent program of information and research relative to atomic development for nonmilitary purposes in the fields of education, science, agriculture, industry, public utilities, transportation, medicine, public health, and all other fields of endeavor which may aid in or be benefited by atomic development and atomic science and engineering, while at the same time protecting the public interests;

(2) To assure continuing studies of the need for changes in the relevant laws and regulations with respect thereto;

(3) To assure co-ordination of studies undertaken particularly with other atomic development activities within the State and with the development and proper regulatory activities of other states and of the government of the United States;

(4) To provide for safety in the use of any and all machines, devices or materials that emit radiation, including those used for medical and industrial purposes, and to provide necessary regulation of the use of such machines, devices and materials; and

(5) To do all things necessary and desirable in order to promote sound and healthy programs of progressive use of atomic energy in North Carolina. (1959, c. 481, s. 1.)

§ 104C-2. Radioactivity and ionizing radiation. — This chapter is to be construed as relating to radioactivity and ionizing radiation. (1959, c. 481, s. 2.)

§ 104C-3. Atomic Energy Advisory Committee; membership; chairman; subcommittees; meetings; powers and duties generally; reports from State departments; additional personnel.—The Governor is author-

ized and empowered to appoint a committee to be known as the Atomic Energy Advisory Committee, hereinafter referred to as "the Committee." The Committee shall consist of thirty-five (35) members. The Commissioner of Agriculture, the State Superintendent of Public Instruction, and the State Health Director shall ex officio be members of said Committee. Thirty-two (32) members shall be appointed by the Governor whose terms shall commence on or as of July 1, 1959. Ten (10) members shall be appointed for terms of two (2) years, eleven (11) for terms of four (4) years, and eleven (11) for terms of six (6) years. Thereafter, appointments to the Committee shall be for terms of six (6) years except that any vacancy arising from any cause other than expiration of a term shall be filled by the Governor by appointment for the remainder of the unexpired term. The chairman shall be designated by the Governor.

The chairman is authorized to appoint from the membership of the Committee six (6) or more subcommittees which shall include subcommittees on

(1) Agriculture,
(2) Education and research,
(3) Industry and labor,
(4) Medicine and public health,
(5) Power, and
(6) Radiation standards.

In making appointments to the Committee the Governor shall give consideration to the qualifications desirable in connection with the functioning of the subcommittees; he shall appoint persons having specialized knowledge in the different fields of activity; he shall include in his appointments at least one radiologist, one nuclear physicist, one radiation physicist, one public health physician, one dentist and one sanitary engineer who shall serve as members of the subcommittee on radiation standards; successor appointments shall be so made that there shall at all times be at least one radiologist, one nuclear physicist, one radiation physicist, one public health physician, one dentist and one sanitary engineer serving as members of the Committee.

The Committee shall meet at the call of the Governor or the chairman and at such other times as the Committee may determine. The members of the Committee shall receive the same per diem and travel and subsistence allowance as is generally allowed for members of State commissions when engaged in attendance at meetings of the Committee or any subcommittee thereof; provided, that no per diem shall be paid any salaried State official or employee.

The Committee shall evaluate studies, recommendations, and proposals of the several departments and agencies and shall act as an advisory and co-ordinating group in the development and regulatory activities of the State relating to atomic energy, including co-operation with other states and with the government of the United States. The Committee shall advise with the Governor for the purpose of keeping him informed as to private and public activities affecting atomic developments.

So far as may be practicable, the Committee shall co-ordinate studies, recommendations and proposals with like activities in other states and in the South as a region, and with the policies and regulations of the United States Atomic Energy Commission.

The Governor is authorized and empowered to require reports from any and all State departments, agencies and institutions with respect to any aspect of the subject matter of this chapter and, in the exercise of his powers and duties under this chapter he may employ such additional personnel, if any, as he deems necessary. (1959, c. 481, s. 3.)

§ 104C-4. Authority and duty of State Board of Health; rules and regulations; licenses; impounding source of radiation; registration, educational and protection programs; right of entry; inspection and advisory service.—The State Board of Health is specifically authorized to adopt

reasonable rules and regulations relating to the use, storage, transportation and disposal of radiation, radiation machines, and radioactive materials so as to provide protection against hazard from radioactivity and ionizing radiation, and so as to insure safety to all persons at, or in the vicinity of, the place of use, storage, transportation or disposal thereof. To this end, the State Board of Health is authorized to require registration of all persons, firms, corporations, associations or institutions who possess or use such machines or materials, such registration program to be of such scope and in such form as the Board deems necessary to provide an adequate protection and supervision program.

As used in this chapter, the word "person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

The State Board of Health shall provide by rule or regulation for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension or revocation of licenses.

Said State Board is authorized to adopt reasonable rules and regulations necessary to carry out an effective licensing program designed to protect the public health or safety in this field. Provision shall be made for applications for licenses, conditions for issuance of licenses, and suspension and revocation of licenses. Said State Board is authorized to exempt certain source of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the said State Board makes a finding that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public. Rules and regulations promulgated pursuant to this chapter may provide for recognition of other state or federal licenses as the said State Board may deem desirable, subject to such registration requirements as the said State Board may prescribe.

The State Board shall have authority to impose a right to inspect premises as a condition of issuance of a license. Neither local boards of health nor counties nor cities shall adopt regulations inconsistent with those adopted by the State Board of Health pursuant to this chapter.

Authorized representatives of the State Board of Health shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

Insofar as practicable, all the provisions of chapter 150 of the General Statutes shall be applicable with respect to licenses and the licensing procedure herein provided for.

Authorized representatives of the State Board of Health shall have authority to enter any premises, other than a private dwelling, where any activities or conditions therein or thereon are the subject of regulations adopted pursuant to this section, for the purpose of determining whether applicable laws and regulations are being properly observed.

The Board is authorized but not required to provide an inspection service and an advisory service, to make surveys, to sponsor educational programs on approved radiation protection practices, and to do any and all other acts deemed desirable in providing an effective protection program. In the performance of these duties, to the end that an environment favorable to the development of the peaceful uses of nuclear energy will be maintained, consistent with public health

and safety, the State Board of Health shall not impose standards any more restrictive than the radiation standards established by the Atomic Energy Act of 1954 and amendments, or successor acts, and regulations issued thereunder; in those situations where no such standards are imposed under said Atomic Energy Act, said Board shall be authorized to impose reasonable standards.

No rules or regulations shall be adopted by the State Board of Health pursuant to this section except with the approval of the Governor.

Recognizing the rapid pace of discovery in the atomic field, the State Board of Health shall keep itself informed regarding the regulatory activities of other states and of the government of the United States and shall endeavor to maintain maximum co-ordination pending the establishment from time to time of clear lines of regulatory authority between the State and the federal governments. All regulations adopted shall be subject to the provisions of G. S. 130-9 (a) and the provisions of article 18 of chapter 143 of the General Statutes. Any violation of any rule or regulation adopted pursuant to this section is hereby declared to be a misdemeanor.

Whenever the State Board of Health has reasonable cause to believe that any person, firm, corporation, association or institution is violating or threatening to violate any regulation adopted pursuant to this section, the Board may enter an order requiring such violator to desist or refrain from such violation; and an action may be brought in the name of the Board on the relation of the State of North Carolina to enjoin such violator from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. (1959, c. 481, s. 4; 1963, c. 1211, s. 1.)

Cross Reference.—As to exemption of X-ray facilities in licensed hospitals from the provisions of this chapter, see § 131-126.3.

Editor's Note.—The 1963 amendment inserted the second through the seventh paragraphs.

§ 104C-5. Governor may enter into agreements with federal government; effect on federal licenses.—(a) The Governor, on behalf of this State, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this State.

(b) Any person who, on the effective date of an agreement under subsection (a) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter, which shall expire ninety (90) days after receipt from the State Board of Health, of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier. (1963, c. 1211, s. 2.)

Chapter 105.

Taxation.

SUBCHAPTER I. LEVY OF TAXES.

Article 3.

Schedule C. Franchise Tax.

Article 4.

Schedule D. Income Tax.

Imposition of Income Tax.

Collection and Enforcement of Income Tax.

Article 4A.

Withholding of Income Taxes from Wages and Filing of Declarations of Estimated Income and Payment of Income Tax by Individuals.

Article 4B.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

SUBCHAPTER I. LEVY OF TAXES.

§ 105-1. Title and purpose of subchapter.

Applied in Great American Ins. Co. v. Gold, 254 N. C. 168, 118 S. E. (2d) 792 (1961).

Article 1.

Schedule A. Inheritance Tax.

§ 105-2. General provisions.

(4) When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a nonresident decedent when such nonresident decedent's property consists of real property within this State or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after March 24, 1939.

(5) For purposes of this article, the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors or the creditors of his estate; except that a power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment. Whenever any person shall have a general power of appointment with respect to any interest in property, such person shall for the purposes of this article be deemed the owner of such interest, and accordingly:

a. If in connection with any transfer of property taxable under this article the transferor shall give to any person a general power of appointment with respect to any interest in such property, the transferor shall be deemed to have given such interest in such property to such person.

b. If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, either by will or by an appointment made in contemplation of the death of such person, or by an appointment intended to take effect in possession or enjoyment at or after such death, he shall be deemed to have made a transfer of such interest to such person or persons.

c. If any person holding a general power of appointment with respect to any interest in property shall relinquish such power by any action taken in contemplation of death or intended to take effect at or after his death, or shall die without fully exercising such power, he shall be deemed, to the extent of such relinquishment or nonexercise, to have made a transfer of such interest to the person or persons who shall benefit thereby.

(6) Neither the exercise nor the relinquishment of a special power of appointment (which shall mean any power other than a general power) with respect to an interest in property shall be deemed to constitute a transfer of such interest within the meaning of this article. If in connection with any transfer taxable under this article the transferor shall give to any person a special power of appointment with respect to any interest in property, he shall be deemed, for the purpose of computing the tax applicable thereto, to have given such interest in equal shares to those persons, not more than two (2), among the pos-

sible appointees and takers in default of appointment whom the transferor's executor or administrator may designate as transferees in the inheritance tax return, except that:

a. If a gift tax return is filed with respect to such transfer, the persons designated therein shall also be designated in the inheritance tax return, and

b. The tax shall be computed according to the relationship of the donee of the power to the persons designated if the possible appointees and takers in default of appointment include any persons more closely related to the donee of the power than to the donor, and if such computation would produce a higher tax.

(1963, c. 941, ss. 1-3.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, deleted the words "or of any property transferred pursuant to a power of appointment contained in any instrument" formerly appearing at the end of subdivision (4). It also rewrote subdivisions (5) and (6). As only subdivisions (4), (5) and (6) were affected by the amendment the rest of the section is not set out.

For note on effect of North Carolina inheritance tax on will compromise agreement, see 36 N. C. Law Rev. 236.

Cited in Cornwell v. Huffman, 258 N. C. 363, 128 S. E. (2d) 798 (1963).

§ 105-3. Property exempt.

(5) The value of an annuity or other payment receivable by any beneficiary (other than the executor) under (a) an employees' trust (or under a contract or insurance policy purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan, which at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of § 401 (a) of the United States Internal Revenue Code; or (b) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan, which at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of paragraph 3 of § 401 (a) of such Code. If such amounts payable after the death of the decedent under a plan described in clause (a) or (b) are attributable to any extent to payments or contributions made by the decedent, no exemption shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of the preceding sentence contributions or payments made by the decedent's employer or former employer under a trust or plan described in clause (a) or (b) shall not be considered to be contributed by the decedent. Provided, that the value of such annuities or other payments receivable described in this subdivision shall not be exempt unless the payments received therefrom are or will be subject to income taxation under article 4 of this subchapter, and if such payments are not or will not be subject to income taxation under article 4 of this subchapter the value of such annuities or other payments receivable shall be included in the gross value of the estate of the decedent and taxable under the provisions of this article. (1939, c. 158, s. 2; 1943, c. 400, s. 1; 1947, c. 501, s. 1; 1951, c. 643, s. 1; 1959, c. 1247.)

Editor's Note.—

The 1959 amendment added subdivision (5), and provided that it should be in full force and effect with respect to the estates of decedents dying on and after July 1, 1959.

As only subdivision (5) was affected by the amendment the rest of the section is not set out.

§ 105-4. Rate of tax—Class A.

Applied in First Union Nat. Bank of North Carolina v. Melvin, 259 N. C. 255, 130 S. E. (2d) 387 (1963).

§ 105-18. Executor, etc., shall deduct tax.

Applied in First Union Nat. Bank of North Carolina v. Melvin, 259 N. C. 255, 130 S. E. (2d) 387 (1963).

§ 105-24. Access to safe deposits of a decedent; withdrawal of bank deposit, etc., payable to either husband or wife or the survivor. —No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest which would thereafter be assessed thereon under this article; but the Commissioner of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing any bank, safe deposit company, trust company, or any other institution to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the total amount of such deposit or deposits is three hundred dollars ($300.00) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Commissioner of Revenue. Every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting lock boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative, lessee or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of any such lock box and to furnish a copy of such inventory to the Commissioner of Revenue, to the executor, administrator, personal representative, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of such lock box; provided, that for lock boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. The clerk of the superior court shall be paid for his services rendered as hereinbefore described by the representative of said estate at the time of his qualification the sum of two ($2.00) dollars for the first hour or portion thereof actually required for said services, and the sum of one ($1.00) dollar for each additional hour or portion thereof actually required for said services, subject to a maximum fee of five ($5.00) dollars, and in addition thereto he shall receive the same mileage as is now allowed by law to witnesses for going from his office to any place located in his county to perform such

services. The clerks of the superior court of the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local acts in conflict with this article are hereby repealed. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Commissioner of Revenue a notice, in such form as the Commissioner of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.

(1959, c. 1192.)

Editor's Note.—

The 1959 amendment changed the first paragraph by inserting in line twenty-five the words "or having access to" and in line twenty-seven the word "lessee". It also inserted the proviso beginning in line thirty-six. As only the first paragraph was affected by the amendment the rest of the section is not set out.

Article 2.

Schedule B. License Taxes.

§ 105-33. Taxes under this article.

(c) Every State license issued under this article or schedule shall be for twelve (12) months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one-half (½) of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this article or schedule shall be for twelve months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one-half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.

(f) All State taxes imposed by this article shall be paid to the Commissioner of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.

(1963, c. 294, s. 3.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "thirtieth day of June" for "thirty-first day of May" in three places in the first sentence of subsection (c). It also substituted "July" for "June" near the beginning of subsection (f) and "thirtieth day of June" for "thirty-first day of May" and "thirtieth day of the following June of any year" for "thirty-

first day of the following May of any year" in the proviso to subsection (f). Section 1 of the amendatory act, effective June 1, 1963, amended subsection (c) so as to extend the duration of current licenses from twelve to thirteen months. Pursuant to s. 10 of the amendatory act, the change effected by s. 1 has not been codified. As only subsections (c) and (f) were changed by the amendment the rest of the section is not set out.

Peddling.—A State license issued under § 105-53 authorizes the licensee to engage in the business of peddling. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

Applied in Eastern Carolina Tastee-Freez, Inc. v. Raleigh, 256 N. C. 208, 123 S. E. (2d) 632 (1962).

§ 105-36.1. Amusements—outdoor theatres.—(a) Every person, firm or corporation engaged in the business of operating an outdoor or drive-in moving picture show or places where vaudeville exhibitions or performances are given for compensation shall apply for and obtain in advance from the Commissioner of Revenue a State license for the privilege of engaging in such business and shall pay a tax in accordance with the following schedule:

For drive-in or outdoor theatres located in or within ten miles of the corporate limits of cities and towns of

	Car Capacity Up to 150	Car Capacity 150 to 300	Car Capacity 300 to 500	Car Capacity 500 or over
less than 3,000 pop.	$ .67 per car	$ .74 per car	$ .80 per car	$ .87 per car
3,000 to 5,000 pop.	.74 per car	.80 per car	.87 per car	.94 per car
5,000 to 10,000 pop.	.80 per car	.87 per car	.94 per car	1.00 per car
10,000 to 20,000 pop.	.87 per car	.94 per car	1.00 per car	1.07 per car
20,000 to 40,000 pop.	.94 per car	1.00 per car	1.07 per car	1.17 per car
40,000 and over	1.00 per car	1.07 per car	1.17 per car	1.34 per car

In addition to the foregoing tax based upon population and car capacity, every operator of a business taxed under this section shall pay a tax of one dollar ($1.00) for each seat or seating space provided for patrons outside of motor vehicles driven into the enclosure by patrons. For the purpose of this section, car capacity shall be determined by the number of outlets provided for individual speakers. In the case of drive-in or outdoor theatres not equipped with individual speakers or outlets therefor, but which are equipped with one or more central speakers, the car capacity shall be regarded and rated as two hundred (200).

In the case of drive-in or outdoor theatres located within ten miles of the corporate limits of more than one municipality, the tax herein levied shall be paid in accordance with the rate applicable to the largest of such municipalities.

For the purpose of this section, unincorporated communities shall be regarded as incorporated municipalities, with the corporate limits deemed to extend one mile in every direction from the intersection of the two principal streets in such unincorporated community; and if there is no such intersection, then from the recognized business center of such unincorporated community.

In the case of drive-in or outdoor theatres located more than ten miles from the corporate limits of any municipality, the tax shall be paid at the rate herein provided for such theatres located within ten miles of the corporate limits of a municipality having a population of 3,000 to 5,000.

In the case of drive-in or outdoor theatres operating less than six months each year, the tax shall be one half the tax herein levied.

(b) Cities and towns may levy upon the businesses taxed in this section not in excess of the following amounts:

In cities or towns of less than 1,500 population	$ 12.50
In cities or towns of 1,500 and less than 3,000 population	31.25
In cities or towns of 3,000 and less than 5,000 population	62.50
In cities or towns of 5,000 and less than 10,000 population	87.50

In cities or towns of 10,000 and less than 15,000 population	137.50
In cities or towns of 15,000 and less than 25,000 population	187.50
In cities or towns of 25,000 population or over	212.50

(1949, c. 392, s. 1; 1957, c. 1340, s. 2; 1959, c. 1259, s. 9F.)

Editor's Note.—
The 1959 amendment changed the table in subsection (a).

§ 105-37. Amusements—moving pictures or vaudeville shows—admission.—(a) Every person, firm, or corporation engaged in the business of operating a moving picture show or place where vaudeville exhibitions or performances are given or operating a theatre or opera house where public exhibitions or performances are given for compensation shall apply for and obtain in advance from the Commissioner of Revenue a State license for the privilege of engaging in such business, and shall pay for such State license for each room, hall, or tent used the following tax:

	Seating Capacity up to 600 Seats	Seating Capacity of 600 to 1200 Seats	Seating Capacity over 1200 Seats
In cities or towns of less than 1,500 population	$ 83.34	$ 100.00	$ 133.34
In cities or towns of 1,500 and less than 3,000 population	133.34	166.67	200.00
In cities or towns of 3,000 and less than 5,000 population	166.67	200.00	266.67
In cities or towns of 5,000 and less than 10,000 population	233.34	266.67	400.00
In cities or towns of 10,000 and less than 15,000 population	266.67	400.00	533.34
In cities or towns of 15,000 and less than 25,000 population	333.34	533.34	666.67
In cities or towns of 25,000 and less than 40,000 population	400.00	666.67	1,000.00
In cities or towns of 40,000 population or over	533.34	1,000.00	1,666.67

(1959, c. 1259, s. 9G.)

Editor's Note.—
The 1959 amendment rewrote the schedule of State license taxes in subsection (a). As only this subsection was changed the rest of the section is not set out.

§ 105-37.1. Amusements — Forms of amusement not otherwise taxed.—(a) Every person, firm or corporation engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempted in this article, for which an admission is charged, shall pay an annual license tax for each room, hall, tent or other place where such admission charges are made, graduated according to population, as follows:

In cities or towns of less than 1,500 population	$10.00
In cities or towns of 1,500 and less than 3,000 population	15.00
In cities or towns of 3,000 and less than 5,000 population	20.00
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 15,000 population	30.00
In cities or towns of 15,000 and less than 25,000 population	40.00
In cities or towns of 25,000 population or over	50.00

In addition to the license tax levied in the above schedule, such person, firm, or corporation shall pay an additional tax upon the gross receipts of such business at the rate of tax levied in article V, schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise. Reports shall be made to the Commissioner of Revenue, in such form as he may prescribe, within the first ten days of each month covering all such gross receipts for the previous month, and the additional tax herein levied shall be paid monthly at the time such reports are made. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.

Every person, firm, or corporation giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay an annual license tax of five dollars ($5.00) for each location where such charges are made, and, in addition, a tax upon the gross receipts derived from admission charges in excess of fifty cents (50¢) at the rate of tax levied in article V, schedule E, §§ 105-164 to 105-187, upon retail sales of merchandise. The additional tax upon gross receipts shall be levied and collected in accordance with such regulations as may be made by the Commissioner of Revenue. No tax shall be levied on admission fees for high school and elementary school contests. The tax levied in this last portion of this section shall apply to all privately owned toll bridges, including all charges made for all vehicles, freight and passenger, and the minimum charge of fifty cents (50¢) for admission shall not apply to bridge tolls.

Dances and other amusements actually promoted and managed by civic and private and public secondary schools, shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000.00) of gross receipts derived from such events shall be exempt from the gross receipts tax herein levied when the entire net proceeds of such dances or other amusements are used exclusively for the school or civic and charitable purposes of such organizations and not to defray the expenses of the organization conducting such dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization shall not be deemed to exempt such dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as hereinbefore required.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one half the base tax levied herein. (1939, c. 158, s. 105; 1943, c. 400, s. 2; 1945, c. 708, s. 2; 1947, c. 501, s. 2; 1963, c. 1231.)

Local Modification.—Cabarrus: 1961, c. 1032.

Editor's Note.—
The 1963 amendment added the last paragraph to subsection (a).

§ 105-44. Coal and coke dealers.

(e) The operator of any truck, automobile, or other motor vehicle coming into this State from another state and selling and/or delivering coal or coke, other than to a person, firm, or corporation taxed under this section, shall pay an annual license tax for the privilege of doing business in this State in cities or towns of less than 2,500 population, ten dollars ($10.00); in cities or towns of 2,500 and less than 5,000 population, fifteen dollars ($15.00); in cities or towns of 5,000 and less than 10,000 population, twenty-five dollars ($25.00); in cities or towns of 10,000 and less than 25,000 population, fifty dollars ($50.00); in cities and towns of 25,000 and over, seventy-five dollars ($75.00). The license secured from the State under this section shall be conspicuously posted within the truck, automobile, or other motor vehicle. This license tax shall be in addition

to all other taxes and fees imposed upon such persons by law. (1939, c. 158, s. 112; 1941, c. 50, s. 3; 1959, c. 1259, s. 9B.)

Editor's Note.—
The 1959 amendment added subsection (e). As the rest of the section was not changed it is not set out.

§ 105-47. Dealers in horses and/or mules.

(d) Every person, firm, or corporation engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules shall keep a full, true and accurate record of all purchases and sales, including purchase invoices and freight bills covering such purchases and sales of all horses and/or mules until such purchases and sales, including purchase invoices and freight bills, have been checked by a duly authorized agent of the Commissioner of Revenue.

(e) Any person, firm, or corporation, required to procure from the Commissioner of Revenue a license under this section, who shall purchase and sell or offer for sale by principal or agent any horses and/or mules without first having obtained such license, shall in addition to the other penalties imposed by this article, be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed one hundred dollars ($100.00) and/or imprisoned not less than thirty (30) days within the discretion of the court.

(f) Counties, cities and towns may levy an annual license tax on the business taxed under this section not in excess of twelve dollars and fifty cents ($12.50). (1939, c. 158, s. 115; 1941, c. 50, s. 3; 1963, c. 1057.)

Editor's Note.—
The 1963 amendment, effective June 1, 1963, struck out former subsections (d), (e) and (g) and the second sentence of subsection (f), all of which dealt with an additional per-head tax on purchases and sales. It also redesignated former subsection (f) as subsection (d) and former subsection (h) as (e) and deleted from former subsection (h) a provision as to failing to file reports and pay the additional tax. It further redesignated former subsection (i) as (f). As the rest of the section was not affected by the amendment it is not set out.

§ 105-50. Pawnbrokers.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 105-53. Peddlers.

Under general State law, "peddling," as defined in this section, is a lawful business or occupation. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

A State license issued under this section authorizes the licensee to engage in the business of peddling. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

Such as Peddling Ice Cream.—Under a license issued in accordance with general State law, the sale and offering for sale of ice cream products on public streets in the area covered by such license is a lawful business or occupation. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

And the statutory provisions contemplate the use of motor vehicles by peddlers in the prosecution of their business or occupation. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

A city cannot, by ordinance, prohibit conduct that is legalized and sanctioned by the General Assembly. Eastern Carolina Tastee-Freez, Inc. v. Raleigh, 256 N. C. 208, 123 S. E. (2d) 632 (1962), holding invalid a municipal ordinance prohibiting the peddling of ice cream along the streets and sidewalks of a city.

Whether City May Prohibit or Regulate Selling on Streets Depends on Delegated Powers.—Whether a municipal corporation has the power to regulate or prohibit the sale of articles of merchandise on its streets and sidewalks depends upon the legislative power delegated to it by the State legislature. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

There Is No Express Grant of Powers as to Peddling.—Section 160-200, which sets forth express powers conferred on municipal corporations, contains no provision relating to the prohibition or regulation of the business or occupation of peddling. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

Other Than to Impose License Taxes.—No express power has been conferred by the General Assembly on municipal corporations to prohibit or to regulate the business or occupation of peddling otherwise than by imposing license taxes thereon. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

But City Has Implied Power to Regulate Selling on Streets from Mobile Units.—In the exercise of express powers conferred upon municipal corporations by the General Assembly a municipal corporation has the implied power to adopt an ordinance providing for the reasonable regulation, but not for the prohibition, of the sale and offering for sale of merchandise upon its streets for mobile units. State v. Byrd, 259 N. C. 141, 130 S. E. (2d) 55 (1963).

§ 105-64. Billiard and pool tables.

(b) This section shall not apply to fraternal organizations having a national charter, American Legion Posts, or posts or other local organizations of other veterans' organizations chartered by Congress or organized and operating on a State-wide or nation-wide basis, Young Men's Christian Associations, and Young Women's Christian Associations, or nonstock, nonprofit charitable recreational corporations, foundations or centers to which a municipality or county contributes any portion of the operating expense.

(1961, c. 965, s. 1.)

Editor's Note.—The 1961 amendment added the part of subsection (b) beginning with the words "or nonstock" in line five. Only subsection (b) is set out.

§ 105-64.1. Bowling alleys.

(b) This section shall not apply to fraternal organizations having a national charter, American Legion Posts, Young Men's Christian Associations, and Young Women's Christian Associations, or nonstock, nonprofit charitable recreational corporations, foundations or centers to which a municipality or county contributes any portion of the operating expense.

(1961, c. 965, s. 2.)

Editor's Note.—The 1961 amendment added the part of subsection (b) beginning with "or nonstock" in line three. Only subsection (b) is set out.

§ 105-65.1. Merchandising dispensers and weighing machines.

(b) (1) In addition to the above annual distributor's or operator's license, every distributor or operator distributing or operating a dispenser or machine designed or used for the dispensing or selling of soft drinks shall apply for and obtain from the Commissioner of Revenue a State-wide license for each such dispenser or machine so operated and shall pay therefor an annual tax of $15.00 per machine or dispenser: Provided, however, that said annual tax shall be five dollars ($5.00) in lieu of fifteen dollars ($15.00), per soft drink machine or dispenser on each soft drink machine or dispenser having a total capacity not in excess of 48 bottles or other dispensing units, including those bottles or other dispensing units stored in such machine or dispenser as well as those in the dispensing rack.

(2) Every person, firm or corporation, operating, maintaining or placing on location any dispenser or machines described in subsection (a) and not required to procure a distributor's or operator's license under the terms of subsection (a) shall apply for and obtain from the Commissioner of Revenue a State-wide license for each such dispenser or machine, and shall pay therefor an annual tax as follows:

Cigarette dispensers or dispensers of other tobacco products .... $ 5.00

Drink dispensers having a capacity in excess of 48 bottles or other dispensing units 15.00

Drink dispensers having a capacity not in excess of 48 bottles or other dispensing units, including those bottles or other dispensing units stored in such machine or dispenser as well as those in the dispensing rack 5.00

Food or other merchandising dispensers selling products for 5¢ or more per unit 1.00

Food or other merchandising dispensers selling products for less than 5¢ per unit ..... .50

Weighing machines 2.50

Provided that the tax on food or merchandising dispensers imposed by this subdivision (2) shall not apply to dispensers dispensing peanuts only or to dispensers dispensing no commodity other than candy containing fifty per cent (50%) or more peanuts, or to penny self-service dispensers or machines twenty per cent (20%) of the gross revenue from which inures to the benefit of the visually handicapped.

(3) The applicant for license under this section shall, in making application for license, specify the serial number of the dispenser, or dispensers and of the weighing machine, or machines, proposed to be distributed or operated, together with a description of the merchandise or service offered for sale thereby, and the amount of deposit required by or in connection with the operation of such dispenser, or dispensers, and such machine, or machines. The license shall carry the serial number to correspond with that on the application; provided, that such licenses shall not be transferable to any other dispensers except under the following conditions: If at any time during the license tax year an applicant or license holder shall elect to replace a licensed machine by a new or unlicensed machine, he may notify the Commissioner by letter, enclosing the vending license of such machine to be replaced, and giving the serial number of the replacement machine and the serial number of the machine being replaced and certifying that the machine being replaced has been withdrawn from his operation by sale or otherwise, and advising the Commissioner of the disposition of the machine being replaced. A new license will thereupon be issued for the replacement machine without the payment of further license tax for the balance of the license tax year in which the replacement occurs. It shall be the duty of the person in whose place of business the dispenser or machine is operated or located to see that the proper State license is attached in a conspicuous place on the dispenser or machine before its operation shall commence.

(4) When application is made under this subsection (b) for license to operate a machine dispensing soft drinks or cigarettes or other tobacco products the applicant for such license shall pay or cause to be paid the license fee provided for under G. S. 105-79 and 105-84, as the case may be.

(1963, c. 1169, s. 10.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, deleted "and no such license shall under any conditions be transferable to any other dispenser or machine" at the end of the second sentence of subdivision (3) of subsection (b); added the proviso to the second sentence and added the present third sentence in such subdivision. As only this subsection was changed the rest of the section is not set out.

§ 105-74. Pressing clubs, dry cleaning plants, and hat blockers.— Every person engaging in any of the businesses as herein defined shall apply for and procure from the Commissioner of Revenue a State license for the privilege of conducting such a business, and pay for each such place of business the following tax in each city or town in which he operates any such place of business, ex-

cept branch offices when located in the same city or town as the parent establishment shall pay one half the tax levied on the parent establishment:

In cities or towns of less than 1,000 population	$ 7.50
In cities or towns of 1,000 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	30.00
In cities or towns of 10,000 and less than 20,000 population	45.00
In cities or towns of 20,000 and less than 50,000 population	60.00
In cities or towns of 50,000 population and over	75.00

Provided that pressing clubs, cleaning plants, and/or hat blocking establishments, as same are defined in this section in cities or towns of 5,000 population or over, employing four or less operators or employees, including the owner if he works in said plant, shall be liable for only one half the amount of license tax specified above.

Every person, firm, or corporation, soliciting cleaning work and/or pressing in any city or town where the actual cleaning and/or pressing is done in a cleaning plant or press shop located outside the city or town wherein said cleaning work and/or pressing is solicited shall procure from the Commissioner of Revenue a State license for the privilege of soliciting in said city or town, and pay for the same an amount equal to the tax which would be paid by said cleaning plant or press shop as if the said cleaning plant or press shop was actually located and being operated in the city or town in which the soliciting is done. This shall not apply to soliciting in cities or towns where there is no cleaning plant, press shop or established agency with fixed place of business, provided that the solicitor shall have paid a State and municipal license tax in this State.

Every person, firm or corporation engaged in the business of soliciting dry cleaning and/or pressing work to be done by a dry cleaning plant which has not paid the State license tax levied herein shall pay a tax of two hundred dollars ($200.00) for each vehicle used in carrying the dry cleaning and/or pressing work, and the license issued by the Commissioner of Revenue shall be carried in the cab of any vehicle so employed. Counties, cities and towns may levy a tax upon such persons, firms or corporations not in excess of that levied by the State.

Cities and towns of under 10,000 population may levy a license tax not in excess of $25.00; cities and towns of 10,000 population and over may levy a license tax not in excess of $50.00. Counties shall not levy a license tax on the business taxed under this section.

Counties, cities and towns may not collect a privilege license tax under this section unless the State license tax, if due, has been first paid.

Definitions: For the purpose of this section, the following definitions shall apply:

"Dry cleaning, and/or hat blocking, and/or pressing establishments" shall mean any place of business, establishment or vehicle wherein the services of dry cleaning, wet cleaning as a process incidental to dry cleaning, spotting and/or pressing, finishing and/or reblocking hats, garments, or wearing apparel of any kind is performed.

"Retail outlet" shall mean any place of business or vehicle where garments are accepted to be dry cleaned and/or pressed, but where the actual dry cleaning and/or pressing is not performed on the premises or vehicles, and where the dry cleaning and/or pressing is performed by a dry cleaning plant or press shop operating under a trade name other than that of the retail outlet.

"Branch office" shall mean an additional establishment where garments are accepted to be dry cleaned and/or pressed, when same is owned and operated by a dry cleaning plant, press shop, or retail outlet and under the same trade name, but where the actual dry cleaning and/or pressing is not performed on the premises.

"Soliciting" as used herein shall mean the acceptance of any article or garment to be dry cleaned and/or pressed.

"Person" as used herein shall mean any person, firm, corporation, partnership, or association.

The term "employee" as used herein shall mean any person working either partially or full time for a cleaning plant, press shop, hat blocking establishment, retail outlet or branch office and shall include all drivers, solicitors and route salesmen irrespective of the method of payment they receive for their services, and shall also include independent contractors soliciting under the same style and firm name as the processing plant. It shall also include any member of the firm, association, corporation or partnership who actually performs any work of any nature in the business.

This section shall not apply to any bona fide student of any college or university in this State operating such pressing or dry cleaning business at such college or university during the school term of such college or university. (1939, c. 158, s. 139; 1943, c. 400, s. 2; 1957, c. 1340, s. 2; 1959, c. 445, ss. 1, 2; 1961, c. 1080, ss. 1, 3.)

Editor's Note.—

The 1959 amendment inserted the fourth and sixth paragraphs.

The 1961 amendment rewrote the tax schedule appearing in the first paragraph as of June 1, 1961. It also as of July 1, 1961, struck out all of the paragraph levying a tax on gross receipts at the rate of one per cent (1%), and the two paragraphs immediately following and dealing with filing reports.

§ 105-77. **Tobacco warehouses.**—(a) Every person, firm, or corporation engaged in the business of operating a warehouse for the sale of leaf tobacco upon commission shall, on or before the first day of July of each year, apply for and obtain from the Commissioner of Revenue a State license for the privilege of operating such warehouse for the next ensuing year, and shall pay for such license the following tax:

For a warehouse in which was sold during the preceding year ending the first day of July:

Less than 1,000,000 pounds	$ 50.00
1,000,000 pounds and less than 2,000,000	75.00
2,000,000 pounds and less than 3,000,000	175.00
3,000,000 pounds and less than 4,000,000	250.00
4,000,000 pounds and less than 5,000,000	400.00
5,000,000 pounds and less than 6,000,000	500.00

For all in excess of 6,000,000 pounds, $500.00 and six cents per thousand pounds.

(c) The Commissioner of Agriculture shall certify to the Commissioner of Revenue, on or before the first day of July of each year, the name of each person, firm, or corporation operating a tobacco warehouse in each county in the State, together with the number of pounds of leaf tobacco sold by such person, firm, or corporation in each warehouse for the preceding year, ending on the first day of July of the current year.

(d) The Commissioner of Agriculture shall report to the solicitor of any judicial district in which a tobacco warehouse is located which the owner or operator thereof shall have failed to make a report of the leaf tobacco sold in such warehouse during the preceding year, ending the first day of July of the current year, and such solicitor shall prosecute any such person, firm or corporation under the provisions of this section.

(1963, c. 294, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "July" for "June" in subsections (a), (c) and (d). Section 2 of the amendatory act, effective June 1, 1963, amended subsection (a) so as to extend the duration of current licenses from one year to thirteen months. Pursuant to s. 10 of the amendatory act, the change effected by s. 2 has not been codified. As only subsections (a), (c) and (d) were changed by the amendment the rest of the section is not set out.

§ **105-80. Dealers in pistols, etc.**—(a) Every person, firm, or corporation who is engaged in the business of keeping in stock, selling, and/or offering for sale any of the articles or commodities enumerated in this section, shall apply for and obtain a State license from the Commissioner of Revenue for the privilege of conducting such business, and shall pay for such license the following tax:

For pistols	$ 50.00
For bowie knives, dirks, daggers, slingshots, leaded canes, iron or metallic knuckles, or articles of like kind	200.00
For blank cartridge pistols	50.00

(b) If such person, firm, or corporation deals only in metallic cartridges, the tax shall be five dollars ($5.00).

(c) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of that levied by the State. (1939, c. 158, s. 145; 1941, c. 50, s. 3; 1959, c. 1205.)

Editor's Note.—

The 1959 amendment substituted "50.00" for "200.00" in line nine.

§ 105-83. Installment paper dealers.

Constitutionality. — The imposition of taxes on installment paper dealers, is not rendered discriminatory by the exemption from the tax of corporations organized under the State or national banking laws, even though banks, in addition to their regular banking business, carry on the identical business of discounting commercial paper, since the two businesses are distinct in fact and the one is subject to regulations and controls which are not applicable to the other. Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

Bank distinguished from installment paper dealer.—See Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ **105-85. Laundries.**—Every person, firm, or corporation engaged in the business of operating a laundry, including wet or damp wash laundries and businesses known as "launderettes," "launderalls" and similar type businesses, where steam, electricity, or other power is used, or who engages in the business of supplying or renting clean linen or towels or wearing apparel, shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business, and shall pay for such license the following tax:

In cities or towns of less than 5,000 population	$ 6.25
In cities or towns of 5,000 and less than 10,000 population	12.50
In cities or towns of 10,000 and less than 15,000 population	18.75
In cities or towns of 15,000 and less than 20,000 population	25.00
In cities or towns of 20,000 and less than 25,000 population	30.00
In cities or towns of 25,000 and less than 30,000 population	36.25
In cities or towns of 30,000 and less than 35,000 population	42.50
In cities or towns of 35,000 and less than 40,000 population	50.00
In cities or towns of 40,000 and less than 45,000 population	56.25
In cities or towns of 45,000 population and above	62.50

Provided, however, that any laundry or other concern herein referred to where the work is performed exclusively by hand or home-size machines only, and where not more than twelve persons are employed, including the owners, the license tax shall be one third of the amount stipulated in the foregoing schedule.

Every person, firm, or corporation soliciting laundry work or supplying or renting clean linen or towels or wearing apparel in any city or town, outside of the city or town wherein said laundry or linen supply or towel supply or wearing apparel supply business is established, shall procure from the Commissioner of Revenue a State license as provided in the above schedule, and shall pay for such license a tax based according to the population of the city or town, for the privilege of soliciting therein. The additional tax levied in this paragraph shall apply to the soliciting of laundry work or linen supply or towel supply work or wearing apparel supply work in any city or town in which there is a laundry,

linen supply or towel supply or wearing apparel supply establishment located in the said city or town. The soliciting of business for or by any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels or wearing apparel shall and the same is hereby construed to be engaging in the said business. Any person, firm, or corporation soliciting in said city or town shall procure from the Commissioner of Revenue a State license for the privilege of soliciting in said city or town, said tax to be in the sum equal to the amount which would be paid if the solicitor had an establishment and actually engaged in such business in the said city or town; provided the solicitor has paid a State, county and municipal license in this State.

Every person, firm or corporation engaged in the business of soliciting laundry work to be done by a laundry or plant which has not paid the State license tax levied herein shall pay a tax of two hundred dollars ($200.00) for each vehicle used in carrying the laundry work, and the license issued by the Commissioner of Revenue shall be carried in the cab of any vehicle so employed. Counties, cities and towns may levy a tax upon such persons, firms or corporations not in excess of that levied by the State.

Counties, cities and towns, respectively, may levy a license tax not in excess of twelve dollars and fifty cents ($12.50) on any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels or wearing apparel in instances when said work is performed outside the said county or town, or when the linen or towels or wearing apparel are supplied by business outside said county or town. Cities and towns may levy a license tax not in excess of fifty dollars ($50.00) on any other person, firm or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels or wearing apparel.

Counties, cities and towns may not collect a privilege license tax under this section unless the State license tax, if due, has been first paid. (1939, c. 158, s. 150; 1943, c. 400, s. 2; 1945, c. 708, s. 2; 1949, c. 392, s. 1; 1959, c. 445, ss. 3-5; 1961, c. 1080, ss. 2, 4; c. 1203.)

Editor's Note.—

The 1959 amendment inserted references to "wearing apparel" throughout the section and inserted the fourth and six paragraphs.

The first 1961 amendment rewrote the tax schedule appearing in the first paragraph as of June 1, 1961. It also as of July 1, 1961, struck out the former last three paragraphs levying a tax on gross receipts at the rate of one per cent (1%) and dealing with reports on same.

The second 1961 amendment, effective June 1, 1962, added the second sentence to the fifth paragraph.

§ 105-88. Loan agencies or brokers.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 105-89. Automobiles, wholesale supply dealers and service stations.

(c) Motor Vehicle Dealers.—

(1) Every person, firm, or corporation engaged in the business of buying, selling, distributing, servicing, storing and/or exchanging motor vehicles, trailers, semitrailers, tires, tools, batteries, electrical equipment, lubricants, and/or automotive equipment, including radios designed for exclusive use in automobiles, and supplies in this State shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business in this State, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 1,000 population	$ 25.00
In cities or towns of 1,000 and less than 2,500 population	50.00
In cities or towns of 2,500 and less than 5,000 population	75.00

In cities or towns of 5,000 and less than 10,000 population 110.00
In cities or towns of 10,000 and less than 20,000 population 140.00
In cities or towns of 20,000 and less than 30,000 population 175.00
In cities or towns of 30,000 or more 200.00

Provided, that persons, firms, or corporations dealing in second-hand or used motor vehicles exclusively shall be liable for the tax as set out in the foregoing schedule unless such business is of a seasonal, temporary, transient, or itinerant nature, in which event the tax shall be three hundred dollars ($300.00) for each location where such business is carried on.

(2) Any person, firm, or corporation who or which deals exclusively in motor fuels and lubricants, and has paid the license tax levied under subsection (a) of this section, shall not be subject to any license tax under subsections (b) and (c) of this section.

(3) No additional license tax under this subsection shall be levied upon or collected from any employee or salesman whose employer has paid the tax levied in this subsection; nor shall the tax apply to dealers in semitrailers weighing not more than five hundred pounds and carrying not more than one-thousand-pound load, and to be towed by passenger cars, nor to dealers in four-wheel, farm type wagons equipped with rubber tires and designed to be pulled or towed by passenger cars or farm tractors.

(4) Premises on which cars are stored or sold when owned or operated by a licensed car dealer under the same name shall not be deemed as a separate place of business when conducted within the corporate limits of any city or town in which such car business is conducted.

(5) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one fourth of that levied by the State, with the exception that the minimum tax may be as much as twenty dollars ($20.00): Provided, if such business is of a seasonal, temporary, transient, or itinerant nature, counties, cities, and towns may levy a tax of three hundred dollars ($300.00) for each location where such business is carried on. (1939, c. 158, s. 153; 1945, c. 708, s. 2; 1947, c. 501, s. 2; 1949, c. 392, s. 1; 1953, c. 1302, s. 2; 1959, c. 1259, ss. 9C-9E.)

Editor's Note.—
The 1959 amendment changed subdivision (4) of subsection (c) by deleting the word "used" formerly appearing immediately before the word "cars" in line one, and deleting the word "new" formerly appearing immediately before the word "car" in lines two and four. As only subsection (c) was changed by the amendment the rest of the section is not set out.

§ 105-90. Emigrant and employment agents.

(b) Every person, firm, or corporation who or which engages in the business of securing employment for a person or persons and charging therefor a fee, commission, or other compensation shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business in this State, and shall pay for such license the following annual tax for each location in which such business is carried on:

In unincorporated communities and in cities and towns of less than 2,500 population $100.00
In cities or towns of 2,500 and less than 5,000 population 200.00
In cities or towns of 5,000 and less than 10,000 population 300.00
In cities or towns of 10,000 or more population 500.00

Provided, that this section shall not apply to any employment agency operated by the federal government, the State, any county or municipality, or whose sole business is procuring employees for work in the production and harvesting of farm crops within the State, nor shall it apply to any registry for registered nurses or

licensed practical nurses when not operated for profit. And provided further, that under this section the tax on any employment agency whose sole business is the placement of teachers and/or other school employees and which has been approved by the State Superintendent of Public Instruction shall be twenty-five dollars ($25.00): Provided further, that the tax on employment agencies where the sole business is the placement of domestic servants or unregistered nurses for employment within the State shall be twenty-five dollars ($25.00).

(1963, c. 787, s. 1.)

Editor's Note.—

The 1963 amendment inserted near the middle of the last paragraph of subsection (b) the words "nor shall it apply to any registry for registered nurses or licensed practical nurses when not operated for profit." As only subsection (b) was changed by the amendment the rest of the section is not set out.

§ 105-90.1. Same; hiring or soliciting labor for employment in state having similar law.

(b) (1) Every person, firm, or corporation who or which engages in the business of securing employment for a person or persons and charging therefor a fee, commission, or other compensation shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business in this State, and shall pay for such license the following annual tax for each location in which such business is carried on:

In unincorporated communities and in cities and towns of less than 2,500 population	$100.00
In cities or towns of 2,500 and less than 5,000 population	200.00
In cities or towns of 5,000 and less than 10,000 population	300.00
In cities or towns of 10,000 or more population	500.00

Provided, that this section shall not apply to any employment agency operated by the federal government, the State, any county or municipality, or whose sole business is procuring employees for work in the production and harvesting of farm crops within the State, nor shall it apply to any registry for registered nurses or licensed practical nurses when not operated for profit. And provided further, that under this section the tax on any employment agency whose sole business is the placement of teachers and/or other school employees and which has been approved by the State Superintendent of Public Instruction shall be twenty-five dollars ($25.00): Provided further, that the tax on employment agencies where the sole business is the placement of domestic servants or unregistered nurses for employment within the State shall be twenty-five dollars ($25.00).

(2) Any person, firm, or corporation violating the provisions of this subsection shall be guilty of a misdemeanor and fined, in addition to other penalties, not less than one thousand dollars ($1,000.00) and/or imprisoned, in the discretion of the court.

(3) Counties, cities and towns may levy a license tax on the business taxed under this subsection not in excess of that levied by the State.

(1963, c. 787, s. 2.)

Editor's Note.—

The 1963 amendment inserted near the middle of the last paragraph of subdivision (1) of subsection (b) the words "nor shall it apply to any registry for registered nurses or licensed practical nurses when not operated for profit." As only subsection (b) was changed by the amendment the rest of the section is not set out.

§ 105-97. Manufacturers of ice cream.

Applied in Eastern Carolina Tastee-Freez, Inc. v. Raleigh, 256 N. C. 208, 123 S. E. (2d) 632 (1962).

§ **105-99. Wholesale distributors of motor fuels.** — Every person, firm, or corporation engaged in the business of distributing or selling at wholesale any motor fuels in this State shall apply to the Commissioner for an additional annual license to engage in such business, and shall pay for such privilege an additional annual license tax determined and measured by the number of pumps owned or leased by the distributor or wholesaler through which such motor fuels are sold, at retail, according to the following schedule:

For the first 50 pumps	$ 2.00 per pump
For 51 additional pumps and not more than 100 pumps	4.00 per pump
For 101 additional pumps and not more than 200 pumps	5.00 per pump
For 201 additional pumps and not more than 300 pumps	6.00 per pump
For 301 additional pumps and not more than 400 pumps	7.00 per pump
For 401 additional pumps and not more than 500 pumps	8.00 per pump
For 501 additional pumps and not more than 600 pumps	9.00 per pump
For all over 600 pumps	10.00 per pump

Any contract or agreement, oral or written, express or implied by the terms or the effects of which the tax herein imposed shall be passed on directly or indirectly to any person, firm, or corporation not engaged in the business hereby taxed is hereby declared to be against the public policy of this State and null and void, and any person, firm, or corporation negotiating such an agreement, or receiving the benefits thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

The tax herein imposed shall be in addition to all other taxes imposed by this chapter or under any other laws.

Counties, cities and towns shall not levy any tax by reason of the additional tax imposed by this section, but this section shall in no way affect the right given to counties, cities, and towns to levy taxes under § 105-89.

The business taxed under this section shall not be taxed under § 105-98. (1939, c. 158, s. 162½; 1963, c. 1169, s. 12.)

Editor's Note. — Prior to the 1963 amendment, effective July 1, 1963, the license tax was $4.00 per pump for the first 100 pumps.

§ **105-101. Tax on seals affixed by officers.**—(a) Whenever the seal of the State, of the State Treasurer, the Secretary of State, or of any other public officer required by law to keep a seal (not including clerks of courts, notaries public, and other county officers) shall be affixed to any paper, the tax to be paid by the party applying for same shall be as follows:

For the Great Seal of the State on warrants of extradition for fugitives from justice from other states, the same fee and seal tax shall be collected from the state making the requisition which is charged in this State for like service.	
For the seal of the State Department, to be collected by the Secretary of State	$1.00
For the seal of the State Treasurer, to be collected by him	1.00
For a scroll, when used in the absence of a seal, the tax shall be on the scroll, and the same as for the seal.	

(1961, c. 1218.)

Editor's Note.—The 1961 amendment struck out the requirement of a tax of $2.50 for affixing the Great Seal of the State on any commission. As the rest of the section was not affected by the amendment only subsection (a) is set out.

§ **105-102.1. Certain cooperative associations.** — (a) Every cooperative marketing association operating solely for the purpose of marketing the products of its members or other farmers, which operations may include activities which are directly related to such marketing activities, and turning back to them the proceeds of sales, less the necessary operating expenses of the association, including interest and dividends on capital stock, on the basis of the quantity

of product furnished by them, and every mutual ditch or irrigation association, mutual or cooperative telephone association or company, mutual canning association, cooperative breeding association, or like organizations or associations of a purely local character deriving receipts solely from assessments, dues or fees collected from members for the sole purpose of meeting expenses, or production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business in this State, and shall pay for such license an annual tax of ten dollars ($10.00), but shall not be required to pay any other tax levied by the provisions of this article.

(b) Counties, cities and towns may not levy any license tax upon such cooperative marketing associations or production credit associations organized under the act of Congress known as the Farm Credit Act of 1933. (1955, c. 1313, s. 1; 1957, c. 1340, s. 2; 1963, c. 601, ss. 1, 2.)

Editor's Note.—

The 1963 amendment, effective Jan. 1, 1963, inserted the reference to production credit associations in the latter part of subsection (a) and also in subsection (b).

Administrative Provisions of Schedule B.

§ 105-109. Engaging in business without a license.—(a) All State license taxes under this article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, but the fine shall not be less than twenty per cent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this article, for each and every thirty days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Commissioner of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.

The provisions of this section shall apply to taxes levied by the counties of the State under authority of this article in the same manner and to the same extent as they apply to taxes levied by the State.

(c) If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this article without such State license, he or it shall be guilty of a misdemeanor, and shall be fined and/or imprisoned in the discretion of the court; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this article, for each and every thirty (30) days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Commis-

sioner of Revenue and paid with the State license tax and shall become a part of the State license tax.

(1963, c. 294, s. 5.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, inserted the words "or fraction thereof" in the first sentence of subsection (b) and near the end of subsection (c). It also substituted "July" for "June" in subsections (a) and (b). As only subsections (a), (b) and (c) were changed by the amendment the rest of the section is not set out.

§ 105-112. License to be procured before beginning business.—(a) Every person, firm, or corporation engaging in any business, trade, and/or profession, or doing any act for which a State license is required and a tax is to be paid under the provisions of this article or schedule, shall, annually in advance, on or before the first day of July of each year, or before engaging in such business, trade, and/or profession, or doing the act, apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business, trade, and/or profession, or doing such act, and shall pay the tax levied therefor.

(1963, c. 294, s. 6.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "July" for "June" in subsection (a). As the other subsections were not changed by the amendment they are not set out.

§ 105-113. Sheriff and city clerk to report.—The sheriff of each county and the clerk of the board of aldermen of each city or town in the State shall, on or before the fifteenth day of July of each year, make a report to the Commissioner of Revenue, containing the names and the business, trade, and/or the profession of every person, firm, or corporation in his county or city who or which is required to apply for and obtain a State license under the provisions of this article or schedule, and upon such forms as shall be provided and in such detail as may be required by the Commissioner of Revenue. (1939, c. 158, s. 191; 1963, c. 294, s. 7.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "July" for "June."

Article 3.

Schedule C. Franchise Tax.

§ 105-116. Franchise or privilege tax on electric light, power, street railway, street bus, gas, water, sewerage, and other similar public service companies not otherwise taxed.—(a) Every person, firm, or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or piped gas, or owning and/or operating a water system subject to regulation by the North Carolina Utilities Commission, or owning and/or operating a public sewerage system, or owning and/or operating a street railway, street bus or similar street transportation system for the transportation of freight or passengers for hire, shall, within thirty days after the first day of January, April, July and October of each year, make and deliver to the Commissioner of Revenue, upon such forms and blanks as required by him, a report verified by the affirmation of the officer or authorized agent making such report and statement, containing the following information:

(1) The total gross receipts for the three months ending the last day of the month immediately preceding such return from such business within and without this State.

(2) The total gross receipts for the same period from such business within this State.

(3) The total gross receipts from the commodities or services described in this section sold to any other person, firm, or corporation engaged in selling such commodities or services to the public, and actually sold by such vendee to the public for consumption and tax paid to this State by the vendee, together with the name of such vendee, with the amount sold and the price received therefor.

(4) The total amount and price paid for such commodities or services purchased from others engaged in the above-named business in this State, and the name or names of the vendor.

(1959, c. 1259, s. 3; 1963, c. 1169, s. 1.)

Editor's Note.—

The 1959 amendment substituted "affirmation" for "oath" near the end of the opening paragraph of section (a).

The 1963 amendment, effective July 1, 1963, substituted "water system subject to regulation by the North Carolina Utilities Commission, or owning and/or operating a public sewerage system," for "water or public sewerage system" in the opening paragraph of subsection (a).

As only this subsection was affected by the amendments the rest of the section is not set out.

§ 105-117. Franchise or privilege tax on Pullman, sleeping, chair, and dining cars.—(a) Every person, firm, or corporation, domestic or foreign, engaged in the business of operating in this State any Pullman, sleeping, chair, dining or other similar cars, where an extra charge is made for the use or occupancy of same, shall annually, on or before the first day of August, make and deliver to the Commissioner of Revenue, upon such forms, blanks, and in such manner as may be required by him, a full, accurate, and true report and statement, verified by affirmation of the officer or authorized agent making such report, of the total gross receipts of such person, firm, or corporation from such business wholly within this State during the year ending the thirtieth day of June of the current year.

(1959, c. 1259, s. 3.)

Editor's Note.—The 1959 amendment substituted "affirmation" for "oath" in line seven of subsection (a). As only this subsection was affected by the amendment the rest of the section is not set out.

§ 105-118. Franchise or privilege tax on express companies.—(a) Every person, firm, or corporation, domestic or foreign, engaged in this State in the business of any express company as defined in this chapter, shall, in addition to a copy of the report required by the Machinery Act then in effect, annually, on or before the first day of August, make and deliver to the Commissioner of Revenue a report and statement, verified by the affirmation of the officer or authorized agent making such report or statement, containing the following information as of the thirtieth day of June of the current year:

(1) The average amount of invested capital employed within and without the State in such business during the year ending the thirtieth day of June of the current year.

(2) The total net income earned on such invested capital from such business during the year ending the thirtieth day of June of the current year.

(3) The total number of miles of railroad lines or other common carriers over which such express companies operate in this State during the year ending the thirtieth day of June of the current year.

(1959, c. 1259, s. 3.)

Editor's Note.—The 1959 amendment substituted "affirmation" for "oath" in line six of subsection (a). As only this subsection was affected by the amendment the rest of the section is not set out.

§ 105-119. Franchise or privilege tax on telegraph companies.—(a) Every person, firm or corporation, domestic or foreign, engaged in operating the apparatus necessary for communication by telegraph between points with-

in this State, shall annually, on or before the first day of August, make and deliver to the Commissioner of Revenue, upon such forms and in such manner as required by him, a report verified by the affirmation of the officer or authorized agent making such report and statement, containing the following information:

(1) The total gross receipts from business within and without this State for the entire calendar year next preceding due date on such return.

(2) The total gross receipts for the same period from business within this State.

(1959, c. 1259, s. 3.)

Editor's Note.—

The 1959 amendment substituted "affirmation" for "oath" in line five of subsection (a). As only this subsection was affected by the amendment the rest of the section is not set out.

§ 105-120. Franchise or privilege tax on telephone companies.—(a) Every person, firm, or corporation, domestic or foreign, owning and/or operating a telephone business for the transmission of messages and/or conversations to, from, through, in or across this State, shall, within thirty days after the first day of January, April, July and October of each year, make and deliver to the Commissioner of Revenue a quarterly return, verified by the affirmation of the officer or authorized agent making such return, showing the total amount of gross receipts of such telephone company for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed.

(1959, c. 1259, s. 3.)

Editor's Note.—

The 1959 amendment substituted "affirmation" for "oath" in line five of subsection (a). As only this subsection was affected by the amendment the rest of the section is not set out.

This Section Construed in Pari Materia with § 160-2 (6).—Construing § 160-2 (6), which authorizes municipalities to grant franchises upon reasonable terms, in pari materia with subsection (f) of this section, it becomes clear that no authorization of additional tax was intended by § 160-2 (6). State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

Free Telephone Service to Municipality Violative of Subsection (f).—The furnishing to a municipality of telephone service free or at a reduced rate in return for the use of municipal streets, alleys and roads for pole lines and underground conduits by the telephone company is in violation of subsection (f) of this section. It is the public interest that each municipality bill the utility company for the service it renders, and the utility company furnish telephone service to the municipality at the regular and applicable rates. State v. Wilson, 252 N. C. 640, 114 S. E. (2d) 786 (1960).

§ 105-122. Franchise or privilege tax on domestic and foreign corporations.

(c) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as herein provided, every such corporation permitted to do business in this State shall allocate to such business in this State a proportion of the total amount of its capital stock, surplus and undivided profits as herein defined, according to the following rules:

(1) Where the principal business of the corporation part of which is conducted in this State is the manufacture, production or sale of tangible personal property or dealing in tangible personal property the total amount of capital stock, surplus and undivided profits of such corporation shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following three ratios, except, that where the items of property and payroll described in paragraphs a and b of this subdivision are both 100 per cent attributable to North Carolina (resulting in 100 per cent

ratios) the total amount of capital stock, surplus and undivided profits of such corporation shall be attributable to North Carolina unless such corporation is taxed upon its net income under the laws of some other state or states or would be taxed upon its net income by some other state or states if such other state or states had the income tax laws of North Carolina:

a. Property.—The ratio of the value of real estate and tangible personal property used by such corporation in this State at the close of the income year of such corporation to the value of the entire real estate and tangible personal property used by it everywhere at the close of the income year of such corporation, as defined in G. S. 105-132, except that inventories of goods, wares and merchandise shall be valued on the basis of a monthly or other periodic average during the income year of such corporation. If the taxpayer does not take or keep records of monthly or other periodic inventories, or, if in the opinion of the Commissioner of Revenue the method and time of taking such inventories does not accurately reflect the true average inventory, the Commissioner shall determine the proper amount from such information as may be available. As used in this paragraph:

1. The words "tangible personal property" shall mean corporeal property such as machinery, tools, implements, goods, wares and merchandise, and shall not mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, evidence of an interest in property or evidences of debt.
2. The word "value" as applied to property owned other than inventories shall mean original cost plus additions and improvements less reserve for depreciation, unless in the opinion of the Commissioner of Revenue the peculiar circumstances in any case justify a different basis, in which event the Commissioner may construe "value" to mean fair market value. Inventories shall be valued in accordance with the accounting practice of the corporation, unless in the opinion of the Commissioner of Revenue a different method is required in order to better reflect the business conducted by the corporation in this State. In determining the value of property no deductions shall be made for encumbrances thereon.
3. The words "property used" shall include all real estate and all tangible personal property owned, leased or rented by the corporation at the close of the income year, as defined in G. S. 105-132, except that any property not connected with the business of the corporation part of which is conducted within North Carolina shall be excluded from both the numerator and denominator of the ratio.
4. The word "value" as applied to real estate rented or leased shall mean the net annual rental rate multiplied by 8, and as applied to tangible personal property rented or leased the word "value" shall mean the net annual rental rate multiplied by such figure for each type of property as the Commissioner shall direct. The net annual rental rate shall mean the gross annual

rental rate paid by the taxpayer less the gross annual rental rate received by the taxpayer for subrentals of real estate.

b. Payrolls. — The ratio of all salaries, wages, commissions and other personal service compensation paid or incurred by the taxpayer in connection with the trade or business of the taxpayer in this State during the income year as defined in G. S. 105-132 to the total salaries, wages, commissions and other personal service compensation paid or incurred by the taxpayer in connection with the entire trade or business of the taxpayer wherever conducted during the income year. For the purposes of this section, all such compensation to employees chiefly working at, sent out from or chiefly connected with an office, agency or place of business of the taxpayer in this State shall be deemed to be in connection with the trade or business of the taxpayer in this State; all such compensation to general executive officers having company-wide authority shall be excluded from the numerator and the denominator of the ratio, and all such compensation in connection with income separately allocated under the provisions of this section shall be excluded from the numerator and the denominator of the ratio.

c. Sales.—The ratio of sales made by such corporation during the income year as defined in G. S. 105-132 which are attributable to North Carolina to the total sales made by such corporation everywhere during the income year.

For purposes of this subsection sales attributable to North Carolina shall be all sales where the goods, merchandise or property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Provided that direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State. The word "sales" as used in this subsection shall be construed to include rentals of tangible personal property the rentals from which are not separately allocated under subdivision (4) of G. S. 105-134, such rentals to be attributed to North Carolina if the property is located in North Carolina.

(2) Where the principal business of the corporation, part of which is conducted in this State, is other than those in subdivision (1) of this subsection the corporation shall apportion the total amount of its capital stock, surplus and undivided profits to North Carolina by the use of the ratio of the gross receipts in this State during the income year as defined in G. S. 105-132 to gross receipts of the company everywhere. For purposes of this paragraph "gross receipts" shall mean all receipts from whatever source received except that gross receipts from sources the net income from which is separately allocated under subdivisions (1) through (5) of G. S. 105-134 and gross receipts received from the casual sale of property used in production of income in the trade or business shall be excluded from both the numerator and the denominator of the ratio.

(3) If any corporation believes that the method of allocation or apportionment hereinbefore described as administered by the Commissioner of Revenue has operated or will so operate as to subject it to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to business within the State, it shall be entitled to file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing thereon. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases the Tax Review Board's membership shall be augmented by the addition of the Commissioner of Revenue, who shall sit as a member of said Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this section. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments, and the decision thereon shall be made by a majority vote of the augmented Board. If the Board shall find that the application of the allocation formula subjects the corporation to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to its business within this State:

a. If the corporation shall employ in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula or alternative formulas prescribed by this section the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board shall be authorized to permit such separate accounting method in lieu of applying the applicable allocation formula if the Board deems such method proper as best reflecting the portion of the capital stock, surplus and undivided profits attributable to this State.

b. If the corporation shall show that any other method of allocation than the applicable allocation formula or alternative formulas prescribed by this section reflects more clearly the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the taxpayer believes will more nearly reflect the portion of its capital stock, surplus and undivided profits attributable to the business within this State. If the Board shall conclude that the allocation formula and the alternative formulas prescribed by this section allocate to this State a greater portion of the capital stock, surplus and undivided profits of the corporation than is reasonably attributable to business within this State, it shall determine the allocable portion by such other method as it shall find best calculated to assign to this State for taxation the portion reasonably attributable to its business within this State.

There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's capital stock, surplus and undivided profits reasonably attributable to its business in this State and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning taxpayer is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a franchise tax report or return to this State except upon order in writing of the Board and any return in which any alternative formula or other method other than the applicable allocation formula prescribed by statute is used without the permission of the Board, shall not be a lawful return.

When the Board determines, pursuant to the provisions of this article, that an alternative formula or other method more accurately reflects the portion of the capital stock, surplus and undivided profits allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its capital stock, surplus and undivided profits for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Commissioner of Revenue may, in his discretion, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations and activities.

A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's capital stock, surplus and undivided profits to North Carolina than will be reasonably attributable to its proposed business within the State. Upon a proper showing in accordance with the procedure described above for determination by the Board, the Board may authorize such corporation to allocate its capital stock, surplus and undivided profits to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years as the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operations presented by the corporation to the Board.

When the Commissioner of Revenue asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved taxpayer may pay the tax under protest and bring a civil action for recovery under the provisions of G. S. 105-241.4.

(4) The proportion of the total capital stock, surplus and undivided profits of each such corporation so allocated shall be deemed to be the proportion of the total capital stock, surplus and undivided profits of each such corporation used in connection with its business in this State and liable for annual franchise tax under the provisions of this section.

(1959, c. 1259, s. 3; 1963, c. 1169, s. 1.)

Editor's Note.—

The 1959 amendment inserted the words "or dealing in tangible personal property" in line three of subsection (c) (1).

The 1963 amendment, effective July 1, 1963, inserted "and gross receipts received from the casual sale of property used in production of income in the trade or busi-

ness" in the last sentence of subsection (c) (2).

As only subsection (c) was affected by the amendments the rest of the section is not set out.

Effect of Business Corporation Act on Section.—It is illogical to assume that the legislature intended by the Business Corporation Act to void regulations permitting computation of taxes on the cash receipt basis and thereby outlaw that method of accounting, or to invalidate an accepted method of determining capital and surplus for franchise tax returns required by this section. Watson v. Watson Seed Farms, Inc., 253 N. C. 238, 116 S. E. (2d) 716 (1961).

Cited in Petition of Vanderbilt University, 252 N. C. 743, 114 S. E. (2d) 655 (1960).

§ 105-124: Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-125. Corporations not mentioned.—None of the taxes levied in §§ 105-122 and 105-123 shall apply to religious, fraternal, benevolent, scientific or educational corporations, not operating for a profit; nor to banking and insurance companies; nor to mutual ditch or irrigation associations, mutual or co-operative telephone associations or companies, mutual canning associations, co-operative breeding associations, or like organizations or associations of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses; nor to co-operative marketing associations operating solely for the purpose of marketing the products of members or other farmers, which operations may include activities which are directly related to such marketing activities, and turning back to them the proceeds of sales, less the necessary operating expenses of the association, including interest and dividends on capital stock on the basis of the quantity of product furnished by them; nor to production credit associations organized under the act of Congress known as the Farm Credit Act of 1933; nor to business leagues, boards of trade, clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, civic leagues operated exclusively for the promotion of social welfare, or chambers of commerce and merchants associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder, individual, or other corporations:

Provided, that each such corporation must, upon request by the Commissioner of Revenue, establish in writing its claim for exemption from said provisions. The provisions of §§ 105-122 and 105-123 shall apply to electric light, power, street railway, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck corporations to the extent and only to the extent that the franchise taxes levied in §§ 105-122 and 105-123 exceed the franchise taxes levied in other sections of this article or schedule. The exemptions in this section shall apply only to those corporations specially mentioned, and no other.

Provided, that any North Carolina corporation which in the opinion of the Commissioner of Revenue of North Carolina qualifies as a "regulated investment company" under the provisions of United States Code Annotated Title 26, section 851, and which files with the North Carolina Department of Revenue its election to be treated as a "regulated investment company", shall in determining its basis for franchise tax be allowed to deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, municipalities, governmental agencies or governments. (1939, c. 158, s. 213; 1951, c. 937, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 3; 1963, c. 601, s. 3; c. 1169, s. 1.)

Editor's Note.—

The first 1963 amendment, effective Jan. 1, 1963, inserted the reference to production credit associations in the latter part of the first paragraph.

The second 1963 amendment, effective July 1, 1963, substituted "851" for "361" near the middle of the last paragraph.

An educational institution of another State which engages in the business of renting real estate in this State is exempt from franchise taxes under this section when no part of its net earnings inures to the benefit of any individual or private

stockholder, and its business here is carried on solely in its capacity of a nonprofit educational institution. Petition of Vanderbilt University, 252 N. C. 743, 114 S. E. (2d) 655 (1960).

§ 105-126: Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-129. Extension of time for filing returns.

(b): Repealed by Session Laws 1959, c. 1259, s. 9.

Editor's Note.—

As subsection (a) was not affected by the repealing act it is not set out.

ARTICLE 4.

Schedule D. Income Tax.

§ 105-131. Purpose.

Quoted in ET & WNC Transportation Co. v. Currie, 248 N. C. 560, 104 S. E. (2d) 403 (1958).

§ 105-132. Definitions.

(14) The words "foreign country" mean any jurisdiction other than the one embraced within the United States. The words "United States," when used in a geographical sense, include the states, the District of Columbia, and the possessions of the United States. (1939, c. 158, s. 302; 1941, c. 50, s. 5; 1955, c. 1331, s. 2; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, deleted a reference to "territories of Alaska and Hawaii" in subdivision (14). As only subdivision (14) was changed the rest of the section is not set out.

§ 105-134. Corporations.

(2) a. Dividends received from, and gains or losses from the sale or other disposition of corporate stocks owned other than stocks of a subsidiary corporation having business transactions with or being engaged in the same or similar type of business as the taxpayer less all related expenses and less that portion of such dividends deductible under the provisions of subdivision (7) of G. S. 105-147 shall be allocated to the state in which the principal place of business of the corporation is located. For purposes of this paragraph a corporation shall be considered to be a subsidiary if the parent corporation owns fifty per cent (50%) or more of the voting stock of such subsidiary.

b. Provided, however, that notwithstanding any other provisions of this section, any corporation receiving dividends from a subsidiary corporation (as defined in subdivision (2) a above) not having business transactions with or not engaged in the same or similar business as the taxpayer shall allocate such dividends less related expenses and less that portion of such dividends deductible under the provisions of subdivision (7) of G. S. 105-147 directly to the state, states, or other taxing jurisdictions to which the subsidiary is subject to a tax based on net income. If such subsidiary corporation is subject to a tax based on net income in North Carolina, the net amount of such dividends received by the taxpayer corporation from such subsidiary shall be allocated directly to North Carolina

by use of the same percentage used in determining the portion of such dividends deductible under the provisions of subdivision (7) of G. S. 105-147. For purposes of this section, the net amount of dividends shall mean gross dividend income received less related expenses and less that portion of such dividends deductible under the provisions of subdivision (7) of G. S. 105-147.

(3) Royalties or similar income received from the use of patents, trademarks, copyrights, secret processes and other similar intangible rights less all related expenses shall be allocated to the state in which the principal place of business of the corporation is located, unless such income is received from sources constituting a part of the corporation's principal, regular or unitary business in which event such income shall be allocated in accordance with the applicable allocation formula hereinafter set out.

(4) Rents received from the lease or rental of real estate or tangible personal property, royalties received from tangible property, and gains or losses from the sale or other disposition of real estate or tangible personal property where the property leased, rented or sold is (or was) not used in or is (or was) not connected with the trade or business of the taxpayer less all related expenses allowable as deductions under this article shall be allocated to the state in which the property was located at the time the income was derived.

(6) The net income of the above classes having been separately allocated, the remainder of the net income of the corporation shall be apportioned as follows:

a. Where the income is derived principally from the manufacture, production or sale of tangible personal property or from dealing in tangible personal property the corporation shall apportion its net apportionable income to North Carolina on the basis of the ratio obtained by taking the arithmetic average of the following three ratios:

1. Property.—The ratio of the value of real estate and tangible personal property used by such corporation in this State at the close of the income year of such corporation to the value of the entire real estate and tangible personal property used by it everywhere at the close of the income year of such corporation, except that inventories of goods, wares and merchandise shall be valued on the basis of a monthly or other periodic average during the income year of such corporation. If the taxpayer does not take or keep records of monthly or other periodic inventories, or, if in the opinion of the Commissioner of Revenue the method and time of taking such inventories does not accurately reflect the true average inventory, the Commissioner shall determine the proper amount from such information as may be available. Provided, that a corporation which ceases its operations in this State before the end of its income year due to dissolution or to withdrawal of its articles of domestication shall value the real estate and tangible personal property used as of the last day of its operations in this State except that inventories of goods, wares and merchandise shall be valued on the basis of a monthly or other periodic average during the period

of operation in this State. As used in this paragraph:

I. The words "tangible personal property" shall mean corporeal property such as machinery, tools, implements, goods, wares and merchandise, and shall not mean cash on hand or in bank, shares of stock, bonds, notes, accounts receivable, credits, special privileges, franchises, good will, evidence of an interest in property or evidences of debt.

II. The word "value" as applied to property owned other than inventories shall mean original costs plus additions and improvements less reserve for depreciation, unless in the opinion of the Commissioner of Revenue the peculiar circumstances in any case justify a different basis, in which event the Commissioner may construe "value" to mean fair market value. Inventories shall be valued in accordance with the accounting practice of the corporation, unless in the opinion of the Commissioner of Revenue a different method is required in order to better reflect the net income of the corporation. In determining the value of property no deductions shall be made for encumbrances thereon.

III. The words "property used" shall include all real estate and all tangible personal property owned, leased or rented by the corporation at the close of the income year, except that any such property newly acquired which, in the course of acquisition or construction, had not been actually used or operated in the taxpayer's business during the income year and any property the income from which is excluded from the net apportionable income of the taxpayer under the provisions of subdivisions (1) through (5) of this section shall be excluded in the computation of the property ratio.

IV. The word "value" as applied to real estate rented or leased shall mean the net annual rental rate multiplied by 8, and as applied to tangible personal property rented or leased the word "value" shall mean the net annual rental rate multiplied by such figure for each type of property as the Commissioner shall direct. The net annual rental rate shall mean the gross annual rental rate paid by the taxpayer less the gross annual rental rate received by the taxpayer for subrentals.

2. Payrolls.—The ratio of all salaries, wages, commissions and other personal service compensation paid or incurred by the taxpayer in connection with the trade or business of the taxpayer in this State during the income year to the total salaries, wages, commissions and

other personal service compensation paid or incurred by the taxpayer in connection with the entire trade or business of the taxpayer wherever conducted during the income year. For the purposes of this section, all such compensation to employees chiefly working at, sent out from or chiefly connected with an office, agency or place of business of the taxpayer in this State shall be deemed to be in connection with the trade or business of the taxpayer in this State; all such compensation to general executive officers having company-wide authority shall be excluded from the numerator and the denominator of the ratio, and all such compensation in connection with income separately allocated under the provisions of this section shall be excluded from the numerator and denominator of the ratio.

3. Sales.—The ratio of sales made by such corporation during the income year which are attributable to North Carolina to the total sales made by such corporation everywhere during the income year.

For purposes of this subdivision sales "attributable to North Carolina" shall be all sales where the goods, merchandise or property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser: Provided, that direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State. The word "sales" as used in this subdivision shall be construed to include rentals of tangible personal property the rentals from which are not separately allocated under subdivision (4) of this section, such rentals to be attributed to North Carolina if the property is located in North Carolina: Provided further that where a corporation is subject to an income tax in another state or states, or would be subject to an income tax in another state or states if such state or states had adopted the net income tax laws of this State, only because of income subject to direct allocation under the provisions of this section, then all sales shall be deemed attributable to this State.

b. Where the income is derived principally from the operation of a railroad the corporation shall apportion its net apportionable income to North Carolina on the basis of the ratio of "railway operating revenue" from business done within this State to "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission.

For purposes of this subdivision " 'railway operating revenue' from business done within this State" shall mean "railway operating revenue" from business wholly within this State, plus

the equal mileage proportion within this State of each item of "railway operating revenue" received from the interstate business of the company. "Equal mileage proportion" shall mean the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue. "Interstate business" shall mean "railway operating revenue" from the interstate transportation of persons or property into, out of, or through this State. If the Commissioner of Revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Commissioner of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this article and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income, and if the proportion of ownership of such partnership shall be in excess of fifty per cent (50%) the partnership shall be considered to be a subsidiary corporation for purposes of determining separate allocation of such net profits.

c. Where the income is derived principally from the operation of a telephone company the corporation shall apportion its net apportionable income to North Carolina on the basis of the ratio of gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of such company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State to the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the amounts in such accounts shall be used in computing the apportionment ratio as provided in this paragraph.

d. Motor carriers of property shall apportion their net apportionable income to North Carolina by the use of the ratio of vehicle miles in this State to total vehicle miles of the company everywhere. For purposes of this paragraph the words "vehicle miles" shall mean miles traveled by vehicles (whether owned or operated by the company) hauling property for a charge or traveling on a scheduled route.

e. Motor carriers of passengers shall apportion their net apportionable income to North Carolina by the use of the ratio of ve-

hicle miles in this State to total vehicle miles of the company everywhere. For purposes of this paragraph "vehicle miles" shall mean miles traveled by vehicles (whether owned or operated by the company) carrying passengers for a fare or traveling on a scheduled route.

f. Where the income is derived principally from the operation of businesses other than that described in paragraphs a through e of this subdivision the corporation shall apportion its net apportionable income to North Carolina by the use of the ratio of the gross receipts in this State to gross receipts of the company everywhere. For purposes of this paragraph "gross receipts" shall mean all receipts from whatever source received except that gross receipts from business operations or from property the net income from which is excluded from net apportionable income under the provisions of subdivisions (1) through (5) of this section and gross receipts received from the casual sale of property used in the production of income in the trade or business shall be excluded from both the numerator and the denominator of the ratio. Provided, where the income is derived principally from the operation of a telegraph company, the corporation shall apportion its net apportionable income to North Carolina on the basis of the ratio obtained by taking the arithmetic average of the following three ratios:

1. Property as defined in subdivision (6) a 1 of this § 105-134;
2. Payrolls as defined in subdivision (6) a 2 of this § 105-134; and
3. Gross receipts as defined in this subdivision (6) f.

g. If any corporation believes that the method of allocation or apportionment hereinbefore described as administered by the Commissioner of Revenue has operated or will so operate as to subject it to taxation on a greater portion of its income than is reasonably attributable to business or earnings within the State, it shall be entitled to file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing thereon. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases the Tax Review Board's membership shall be augmented by the addition of the Commissioner of Revenue, who shall sit as a member of said Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this section. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments and the decisions thereon shall be made by a majority vote of the augmented Board. If the Board shall find that the application of the allocation formula subjects the corporation to taxation on a greater portion of its income or earnings than is reasonably attributable to its business or earnings within this State:

1. If the corporation shall employ in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula or alternative formulas prescribed by this section the income attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board shall be authorized to permit such separate accounting method in lieu of applying the applicable allocation formula if the Board deems such method proper as best reflecting the income and earnings attributable to this State.
2. If the corporation shall show that any other method of allocation than the applicable allocation formula prescribed by this section reflects more clearly the income attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the taxpayer believes will more nearly reflect its income from business within this State. If the Board shall conclude that the allocation formula and the alternative formulas prescribed by this section allocate to this State a greater portion of the net income of the corporation than is reasonably attributable to business or earnings within this State, it shall determine the allocable net income by such other method as it shall find best calculated to assign to this State for taxation the portion of the net income of the corporation reasonably attributable to its business or earnings within this State.

   There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's income earned in this State and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning taxpayer is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a report or return of its income to this State except upon order in writing of the Board and any return in which any alternative formula or other method other than the applicable allocation formula prescribed by statutes is used without permission of the Board, shall not be a lawful return.

   When the Board determines, pursuant to the provisions of this article, that an alternative formula or other method more accurately reflects the income allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its net income for future years in accordance with such determination and decision of the Board so long as the conditions consti-

tuting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Commissioner of Revenue may, in his discretion, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations and activities.

A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's future income to North Carolina than will be reasonably attributable to its proposed business or contemplated earnings within the State. Upon a proper showing in accordance with the procedure described above for determinations by the Board, the Board may authorize such corporation to allocate income from its future business to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years as the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operation presented by the corporation to the Board.

When the Commissioner of Revenue asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved taxpayer may pay the tax and bring a civil action for recovery under the provisions of G. S. 105-241.4. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186.)

Editor's Note.—

The 1959 amendment added the part of subdivision (3) beginning with "unless" in line four. It also changed subdivision (6) by adding the proviso at the end of a 3 and inserting the words "and gross receipts received from the casual sale of property used in the production of income in the trade or business" beginning in line eleven of paragraph lettered f. As only

Editor's Note.—

The first 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, deleted "during the income year" following the word "taxpayer" near the middle of subdivision (4); inserted near the middle of sub-subparagraph III of subparagraph 1 of paragraph a of subdivision (6) the words "any such property newly acquired which, in the course of acquisition or construction, had not been actually used or operated in the taxpayer's business during the income year and"; deleted the former sixth sentence of paragraph b of subdivision (6); and deleted the word "further" near the beginning of the former seventh, now sixth, sentence of such paragraph.

The second 1963 amendment, effective as to tax years beginning on and after Jan. 1, 1963, added paragraph b of subdivision (2).

As only subdivisions (2), (3), (4) and (6) were affected by the amendments the rest of the section is not set out.

For note as to allocation of interstate corporate income, etc., see 36 N. C. Law Rev. 156.

Income Tax and Franchise Tax Distinguished.—A comparison of article 3 of this chapter, relating to franchise taxes, and article 4, relating to income taxes, indicates a clear legislative intent to differentiate between these two types of taxes, for a clear distinction has been made by the General Assembly between an excise tax imposed on domestic and foreign corporations for the privilege of transacting business within the State, and an income tax on net corporate income, which is

based on a past fact of earned net profits. The statutes under which these taxes were assessed in the instant case in precise words preclude a contention that it was the legislative intent that the taxes assessed and paid here were excise or privilege taxes. ET & WNC Transportation Co. v. Currie, 248 N. C. 560, 104 S. E. (2d) 403 (1958), construing the section prior to the 1957 amendment.

The incidence of the tax on a foreign corporation is that part of its net income earned within North Carolina by reason of its interstate business, and reasonably attributable to its interstate business done or performable within the borders of North Carolina, and not upon its franchise to engage in interstate business in North Carolina. ET & WNC Transportation Co. v. Currie, 248 N. C. 560, 104 S. E. (2d) 403 (1958), construing the section prior to the 1957 amendment.

Tax on Foreign Corporation Doing Exclusively Interstate Business.—An income tax imposed under this section on a foreign corporation doing an exclusively interstate business as a motor carrier of freight did not impose a burden on interstate commerce in contravention of the United States Constitution, since no tax would be imposed if such corporation should have no net income earned in North Carolina by reason of its interstate business, and the tax was imposed only upon that portion of its net income which was reasonably attributable to its interstate business done within the borders of the State, without any discrimination against the taxpayer either in the admeasurement of the tax or the means for enforcing it, and the tax not being upon the franchise to engage in business. ET & WNC Transportation Co. v. Currie, 248 N. C. 560, 104 S. E. (2d) 403 (1958), construing this section as it stood before the 1957 amendment.

In the collection of income taxes under this section from a foreign corporation doing an exclusively interstate business in North Carolina there was no violation of the "due process of law" provision of the Fourteenth Amendment to the federal Constitution or of the "law of the land" provision of N. C. Const., art. 1, § 17. ET & WNC Transportation Co. v. Currie, 248 N. C. 560, 104 S. E. (2d) 403 (1958), construing this section as it stood before the 1957 amendment.

Mutual Dependency of Interrelated Activities Sustains Apportionment Formula.—In allocating for taxation by this State a part of the net income of a unitary business operating in this State and several other states, it is not required that its equipment appropriately employed in this State be equally productive with that employed in the other states, but the mutual dependency of the interrelated activities in furtherance of the entire business sustains an apportionment formula which results in a reasonable approximation of its income earned here, it being required only that the formula not be intrinsically arbitrary or produce an unreasonable result. Virginia Electric & Power Co. v. Currie, 254 N. C. 17, 118 S. E. (2d) 155 (1961).

The State has the right to collect nondiscriminatory income taxes imposed on a foreign corporation if the taxes are imposed solely on that part of the corporation's income earned within the State in its interstate business, and reasonably attributable to its interstate business done or performed within the borders of this State. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

Method of Apportionment Not Intrinsically Arbitrary Will Be Sustained.—In determining the amount of income of a foreign corporation subject to taxation by a state the difficulty of making an exact apportionment is apparent and hence, when the state has adopted a method not intrinsically arbitrary, it will be sustained until proof is offered of an unreasonable and arbitrary application in particular cases. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

But Evidence May Be Received to Show Arbitrary Application in Particular Case.—When there are different taxing jurisdictions, each competent to lay a tax with respect to what lies within, and is done within, its own borders, and the question is necessarily one of apportionment, evidence may always be received which tends to show that a state has applied a method, which, albeit fair on its face, operates so as to reach profits which are in no just sense attributable to transactions within its jurisdiction. American Bakeries Co. v. Johnson, 259 N .C. 419, 131 S. E. (2d) 1 (1963).

Apportionment of Income of Unitary Business. — The fact that the corporate enterprise is a unitary one, in the sense that the ultimate gain is derived from the entire business, does not mean that for the purpose of taxation the activities which are conducted in different jurisdictions are to be regarded as component parts of a single unit so that the entire net income may be taxed in one state regardless of the extent to which it may derive from the conduct of the enterprise in another state. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

Although a unitary business (a concern that is carrying on one kind of business, the component parts of which are too closely connected and necessary to each other to justify division or separate consideration, as independent units) may produce an income which must be allocated to two or more states in which its activities are carried on, such business may not be split up arbitrarily and conventionally in applying the tax laws; there must be some logical reference to the production of income. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

In apportioning the income of a unitary business to determine how much of it is subject to state taxation the formula used must give adequate weight to the essential elements responsible for the earning of the income. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

Taxation of Dividends Received by Foreign Corporation from Foreign Subsidiary.—For purposes of taxation in a parent-subsidiary relationship, where the corporate separation is maintained and the subsidiary conducts its own business, the subsidiary, not the parent, is doing the business. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

The mere fact that a foreign corporation engaged in business in this and other states, owns a subsidiary corporation in another state, which subsidiary does no business in North Carolina and owns no property in this State but is engaged in a similar business to that of the parent corporation, does not of itself require the parent corporation to prorate the dividends received from such subsidiary to all the states in which the parent corporation does business. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

There was no legal basis for requiring a foreign corporation to pay income taxes to the State on the dividends received from its subsidiary, where the subsidiary was neither a customer nor a retail outlet of the parent corporation, and the dividends were paid out of earnings of the subsidiary no part of which was earned from business conducted or transacted in the State. American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

Cited in Good Will Distributors (Northern), Inc. v. Shaw, 247 N. C. 157, 100 S. E. (2d) 334 (1957); Petition of Vanderbilt University, 252 N. C. 743, 114 S. E. (2d) 655 (1960).

§ 105-137. Taxable year.—The tax imposed by this article for the year one thousand nine hundred and thirty-nine shall be assessed, collected, and paid in the year one thousand nine hundred and forty and for the year one thousand nine hundred and forty and years thereafter shall be assessed, collected, and paid in the year following the year for which the assessment is made, except as may be hereinafter provided to the contrary by article 4A and article 4B. (1939, c. 158, s. 313; 1959, c. 1259, s. 2.)

Editor's Note.—The 1959 amendment, effective as of Jan. 1, 1960, added the exception clause at the end of the section.

§ 105-138. Conditional and other exemptions. — (a) The following organizations shall be exempt from taxation under this article except as provided in subsection (b) of this section:

(1) Fraternal beneficiary societies, orders or associations.

a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents.

(2) Every bank or banking association, State or national, trust company or any combination of such facilities or services required to report and subject to taxation for excise tax purposes under article 8C of this chapter; and building and loan associations or savings and loan associations required to report and subject to taxation for captial stock tax and/or excise tax purposes under article 8D of this chapter and any cooperative banks without capital stock organized and operated

for mutual purposes and without profit, and electric and telephone membership corporations organized under chapter 117 of the General Statutes.

(3) Cemetery corporations and corporations organized or trusts created for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

(7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or co-operative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting expenses.

(8) Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them.

(9) Mutual associations formed under §§ 54-111 to 54-128, formed to conduct agricultural business on the mutual plan; or to marketing associations organized under §§ 54-129 to 54-158.

Nothing in this subdivision shall be construed to exempt any co-operative, mutual association or other organization from an income tax on net income which has not been refunded to patrons on a patronage basis and distributed either in cash, stock, certificates, or in some other manner that discloses to each patron the amount of his patronage refund; provided, that such patronage refunds made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of such year shall be considered as made on the last day of such taxable year to the extent the allocations are attributable to income derived before the close of such year; provided further, that no stabilization or marketing organization, which handles agricultural products for sale for producers on a pool basis, shall be deemed to have realized any net income or profit in the disposition of a pool or any part of a pool until all of the products in that pool shall have been sold and the pool shall have been closed; provided, further, that a pool shall not be deemed closed until the expiration of at least 90 days after the sale of the last remaining product in that pool. Such co-operatives and other organizations shall file an annual informational return with the State Department of Revenue on forms to be furnished by the Commissioner and shall include therein the names and addresses of all persons, patrons and/or shareholders, whose patronage refunds amount to $10.00 or more.

(10) Pension, profit sharing, stock bonus and annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible em-

ployees, or the beneficiaries of such employees, and so constituted that no part of the corpus or income may be used for, or diverted to, any purpose other than for the exclusive benefit of the employees or their beneficiaries; provided, there is no discrimination, as to eligibility requirements, contributions or benefits, in favor of officers, shareholders, supervisors, or highly paid employees; provided further, that the interest of individual employees participating therein shall be irrevocable and nonforfeitable to the extent of any contributions made thereto by such employees; and provided further, the Commissioner of Revenue shall be empowered to promulgate rules and regulations regarding the qualification of such trusts for exemption under this subdivision. The exemption of any trust under the provisions of the federal income tax law shall be a prima facie basis for exemption of said trust under this paragraph. This subdivision shall be effective from and after January first, one thousand nine hundred and forty-four.

(11) Insurance companies paying the tax on gross premiums as specified in § 105-228.5.

(b) Organizations described in subdivisions (1), (3), (4), (5), (6), (7), (8), (9) or (10) of subsection (a) of this section shall be subject to the tax provided for in G. S. 105-134 to the following extent:

Gross income derived by any organization from any trade or business the conduct of which is not substantially related (aside from the need of the organization for income) to the exercise or performance of those functions constituting the basis for its exemption in subsection (a) of this section, less all deductions allowed by this article directly connected with carrying on such trade or business and less one thousand dollars ($1,000.00); provided, this paragraph shall not apply to interest, royalties, dividends or rents; provided further, this paragraph shall not apply to any trade or business (i) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or (ii) which is the selling of merchandise, substantially all of which is given to it; or (iii) which is carried on by an organization described in G. S. 105-138 (a) (3) primarily for the convenience of its members, students, patients or employees. Provided further, this paragraph shall not apply to net income derived from research (i) performed by a college, university or hospital; or (ii) performed for the United States, its instrumentalities or any State or political subdivision thereof; or (iii) performed by an organization operated primarily for the purpose of carrying on fundamental research, the results of which are freely available to the general public. (1939, c. 158, s. 314; 1945, c. 708, s. 4; c. 752, s. 3; 1949, c. 392, s. 3; 1951, c. 937, s. 1; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1959 amendment added at the end of subdivision (2) the reference to electric and telephone membership corporations.

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, designated the former provisions of this section as subsection (a) and added subsection (b). It also rewrote the introductory paragraph of present subsection (a) and deleted the paragraph at the end of that subsection, relating to "regulated investment companies."

Income realized by an educational institution of another state from the rental of real estate owned by it in this State is exempt from income taxes under this section, when such income is placed in the general fund of such educational institution and is used exclusively for educational purposes. Petition of Vanderbilt University, 252 N. C. 743, 114 S. E. (2d) 655 (1960).

§ 105-138.1. Regulated investment companies and real estate investment trusts. — Any North Carolina organization or trust which, in the opinion of the Commissioner of Revenue of North Carolina, qualifies as either a "regulated investment company" under the provisions of United States Code

Annotated Title 26, § 851, or as a "real estate investment trust" under the provisions of United States Code Annotated Title 26, § 856, and which files with the North Carolina Department of Revenue its election to be treated as a "regulated investment company" or as a "real estate investment trust" shall be taxed under this article upon only that part of its net income which is not distributed or declared for distribution to shareholders during the income year or (i), with respect to a regulated investment company, within thirty (30) days after the end of the income year and (ii), with respect to a real estate investment, trust by the time regulated by law for the filing of the return for the income year. (1963, c. 1169, s. 2.)

Editor's Note. — The 1963 act inserting this section is effective as to income years beginning on and after Jan. 1, 1963.

§ **105-139. Fiduciaries.**—(a) The tax imposed by this article shall be imposed upon the following:

(1) The net income of an estate or trust administered by a resident fiduciary for the benefit of a resident of this State;

(2) The net income of an estate or trust administered by a resident fiduciary which is earned in this State for the benefit of a nonresident;

(3) The net income of an estate or trust administered by a nonresident fiduciary for the benefit of a resident of this State;

(4) The net income of an estate or trust administered by a nonresident fiduciary for the benefit of a nonresident beneficiary when such income is derived from an established business or an investment in real or tangible personal property located in this State; and

(5) The net income received during the income year by deceased individuals who, at the time of death, were residents of this State and who died during the tax year or the income year without having made a return.

(1963, c. 1169, s. 2.)

Editor's Note.—

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, inserted present subdivision (4) in subsection (a) and redesignated former subdivision (4) as (5). As only subsection (a) was changed the rest of the section is not set out.

§ 105-140. Net income defined.

Stated in Good Will Distributors (Northern), Inc. v. Shaw, 247 N. C. 157, 100 S. E. (2d) 334 (1957).

Cited in Stiles v. Currie, 254 N. C. 197, 118 S. E. (2d) 428 (1961).

§ **105-141. Gross income defined.**—(a) The words "gross income" mean the income of a taxpayer derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce or sales, or dealings in property, whether real or personal, located in this or any other state or any other place, growing out of the ownership or use of or interest in such property, also from interest, rent, dividends, securities, or the transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items shall be included in the gross income of the income year in which received by the taxpayer, unless, under the methods of accounting permitted under this article, any such amounts are to be properly accounted for as of a different period. The term "gross income" as used in this article shall include the salaries of all constitutional State officials taking office after the date of the enactment of this article by election, reelection or appointment, and all acts fixing the compensation of such constitutional State officials are hereby amended accordingly. The term "gross income" and the words "business, trade, profession, or occupation," and the words "salaries, wages, or compensation for personal services," as used in this

article, shall include compensation received for personal service as an officer or employee of the United States, any territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, including compensation as an officer or employee of the executive, legislative, or judicial branches of the government of the United States and of the military, naval, coast guard or other services thereof.

The term "gross income" as used in this article shall include income from annuities as provided in G. S. 105-141.1.

The Commissioner of Revenue is hereby authorized, in his discretion, to adopt rules and regulations providing that recoveries of bad debts or similar items which have been charged off by banks or other business under the regulations and supervision of a State agency, where such charge-offs were required to be made by said supervising State agency, shall be includible in gross income to the same extent as such recoveries are includible in gross income under the federal income tax laws in effect at the time of the issuance of said rules and regulations, or to adopt such other rules and regulations regarding such recoveries as may be deemed just, reasonable and proper. The rules and regulations may be made applicable to charge-offs made prior to January first, one thousand nine hundred and forty-five, but not recovered until after January first, one thousand nine hundred and forty-five.

The words "gross income" include payments received by a divorced or estranged spouse from his or her spouse who is living separate and apart from the spouse making such payments for the separate support and maintenance of such spouse subject to the provisions of G. S. 105-141.2.

The words "gross income" include any payments received by the estate, widow or heirs of an employee if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee. Provided, that such payments may be excluded from gross income to the extent of five thousand dollars ($5,000.00) with respect to the death of any one employee regardless of the number of employers making such payments, except that such exclusion shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living, except that even though an employee possessed a nonforfeitable right immediately before his death to receive the amounts while living, the exclusion provided in this paragraph will still apply in those cases in which the total distributions are payable within one taxable year of the distributee to such distributee by a pension, profit-sharing, stock bonus or annuity trust qualifying under the provisions of subdivision (10) of G. S. 105-138.

(b) The words "gross income" do not include the following items, which shall be exempt from taxation under this article, but shall be reported in such form and manner as may be prescribed by the Commissioner of Revenue:

(1) The proceeds of life insurance policies and contracts paid upon the death of the insured to beneficiaries or to the estate of the insured.

(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance endowment contracts, either during the term or at the maturity of the term mentioned in the contracts or upon surrender of the contract.

(3) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(4) Interest upon the obligations of the United States or its possessions, or of the State of North Carolina, or of a political subdivision thereof: Provided, interest upon the obligations of the United States shall not be excluded from gross income unless interest upon obligations of the State of North Carolina or any of its political subdivisions is excluded from income taxes imposed by the United States.

(5) Any amounts received (i) through accident or health insurance, (ii)

through health or accident plans financed by profit-sharing trusts or pension trusts, (iii) under workmen's compensation acts or similar acts (which have been judicially declared to provide benefits in the nature of workmen's compensation benefits, by whatever name called) as compensation for personal injuries or sickness, and (iv) for damages, whether by suit or agreement on account of injuries or sickness; provided, that any amounts received from the sources mentioned in this subsection as reimbursement for medical expenses incurred and claimed in a prior year or in prior years shall be excluded only to the extent that such amounts exceed the deduction claimed under subdivision (11) of G. S. 105-147 (relating to medical, etc., expenses), except that nothing in this subsection shall be construed as preventing a taxpayer from filing an amended return for a taxable year in which a medical deduction was claimed and allowed for the purpose of reducing the amount of the medical expense deduction claimed in such year by any reimbursement for such medical expenses received in a later year when a change in the prior year is not barred by the provisions of this article.

(6) The rental value of a home and the appurtenances thereof furnished to a minister of the gospel as a part of his compensation, or the rental allowance paid to him as a part of his compensation to the extent used by him to rent or provide a home including the appurtenances thereof; also the rental value of any homes and quarters and the appurtenances thereof furnished the officers and employees of orphanages, whose duties require them to live on the premises and in buildings owned by such institutions, as a part of their compensation.

(7) The amounts received in lump sum or monthly payments of benefits under the Social Security Act.

(8) The amounts received in lump sum or monthly payment benefits from retirement or pension systems of other states by former teachers or State employees of such states: Provided, this exclusion shall apply only to individuals receiving benefits from states which grant similar exclusions or exemptions for individual income tax purposes to retired members of the North Carolina Retirement System for Teachers and State Employees or which levy no income tax on individuals.

(9) The gross income of an employee shall not include:

a. The value of any meals or lodging furnished by his employer for the convenience of the employer provided, in the case of meals, the meals are furnished on the business premises of the employer, and, in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment; and

b. Amounts expended by his employer for premiums on group life, accident, health, or hospitalization insurance plans for the benefit of the employee.

(10) The amounts received as a scholarship at an educational institution or as a fellowship grant, including the value of contributed services and accommodations; and the amounts received to cover expenses for travel, research, clerical help, or equipment, which are incident to such scholarship or fellowship grant, but only to the extent that the amounts are so expended by the recipient and subject to the following limitations:

a. In the case of an individual who is a candidate for a degree at an educational institution the exemption from income shall not apply to that portion of any amount received which represents payment for teaching, research, or other services in the nature

of part-time employment required as a condition to receiving the scholarship or fellowship grant. If teaching, research, or other services are required of all candidates (whether or not recipients of scholarship or fellowship grants) for a particular degree as a condition to receiving such degree, such teaching, research, or other services shall not be regarded as part-time employment within the meaning of this paragraph. For the purpose of this subdivision the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

b. In the case of an individual who is not a candidate for a degree at an educational institution, the exemption from income tax shall apply only if all of the following conditions are met:

1. The amount received does not represent payment for teaching, research, or other employment;
2. The grantor of the scholarship is an organization described in subdivision (15) of G. S. 105-147, the United States, the State of North Carolina, a political subdivision of this State, or any of their agencies or instrumentalities;
3. The amount received does not exceed an amount equal to three hundred dollars ($300.00) times the number of months for which the recipient received amounts under the scholarship or fellowship grant during the taxable year; and
4. The recipient has not been entitled to exclude amounts received as a scholarship or fellowship grant while not a candidate for a degree at an educational institution for thirty-six (36) months, whether or not consecutive.

(11) Any amounts received as reimbursement through insurance or from any other source for losses of such nature as those allowable under subdivisions (9) a and (9) b of G. S. 105-147 only to the extent that such losses when claimed as a deduction on a return required to be filed by the provisions of this article did not serve to reduce the amount of tax owed by the taxpayer. (1939, c. 158, s. 317; 1941, c. 50, s. 5; c. 283; 1943, c. 400, s. 4; 1945, c. 708, s. 4; c. 752, s. 3; 1951, c. 643, s. 4; 1957, c. 1224; c. 1340, s. 4; 1961, c. 893; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1961 amendment changed subdivision (5) of subsection (b) by striking out the words "the Workmen's Compensation Act" and inserting in lieu thereof the words "workmen's compensation acts or similar acts (which have been judicially declared to provide benefits in the nature of workmen's compensation benefits, by whatever name called)."

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, changed the provisions of the proviso in the last paragraph of subsection (a) relative to distributions payable by pension, profit-sharing, stock bonus or annuity trust. It also deleted the last sentence of subdivision (4) of subsection (b), rewrote subdivision (5) of subsection (b) and the portion of subdivision (6) of subsection (b) dealing with a home furnished to a minister, and added subdivisions (10) and (11) of subsection (b).

There appears to be a statutory correlation between § 105-147 (23) and the last paragraph of subsection (a) of this section. Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

Cited in Good Will Distributors (Northern), Inc. v. Shaw, 247 N. C. 157, 100 S. E. (2d) 334 (1957).

§ 105-141.3. Adjusted gross income defined.—The words "adjusted gross income" for the purposes of this article shall mean gross income taxable under this article less all expenses allowed as deductions by this article which were incurred in deriving such income. (1963, c. 1169, s. 2.)

Editor's Note.—The 1963 act adding this section is effective as to income years beginning on and after Jan. 1, 1963.

§ 105-142. Basis of return of net income.

(e) The amount actually distributed or made available to any employee or the beneficiary of an employee by an employees' trust, which qualifies under subdivision (10) of G. S. 105-138 as an exempt organization, shall be taxable to the employee or his beneficiary in the year in which distributed or made available; provided, that if such employee has made contributions to such trust, and the benefits are received as periodic payments, the amounts annually received shall be taxed as an annuity as provided in G. S. 105-141.1. The amount actually received or made available to the employee or his beneficiary which consists of corporate shares or other securities shall be taken into account in determining the amount distributed or made available at their fair market value, except that the net unrealized appreciation in the corporate shares or other securities of the employer corporation shall not be included in determining such amount distributed or made available for purposes of this subsection.

(g) (1) A taxpayer who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.

(2) Income from a sale or other disposition of real property, or a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding one thousand dollars ($1,000.00), may be returned on the basis and in the manner prescribed in subdivision (1), provided, however, that such income may be so returned only if in the taxable year of the sale or other disposition there are no payments or the payments (exclusive of evidence of indebtedness of the purchaser) do not exceed thirty per cent (30%) of the selling price; provided further, that this method of reporting income from installment sales shall not be used by individuals who are not residents of this State or by foreign corporations not domesticated in this State unless such nonresident individual or corporation files a bond with the Commissioner of Revenue in such amount and with such sureties as the Commissioner shall deem necessary to secure the payment of any taxes which were deferred with respect to any gain from such sale or other disposition; and, provided further, that if a timely election is made to report a gain from an installment sale on the basis prescribed in this subsection such election shall be binding on the taxpayer and he may not after the date prescribed by law for filing his return change to another method of reporting such gains, and in like manner if a timely election is made to report a gain on other than the installment basis such election shall likewise be binding on the taxpayer.

(3) Sale or Other Disposition.

a. If an installment obligation is satisfied at other than its face value or is distributed, transmitted, sold or otherwise dis-

posed of, gain or loss shall result to the extent of the difference between the basis of the obligation and

1. The amount realized, in the case of satisfaction at other than face value or a sale or exchange, or
2. The fair market value of the obligation at the time of the distribution, transmission or disposition in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

b. The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

c. Except as provided elsewhere in this article this subdivision (3) shall not apply to the transmission of installment obligations at death; provided, that any corporation availing itself of the provisions of this subsection and which is planning to either withdraw its articles of domestication or remove its business from this State, merge, or consolidate its business with another corporation or other interests or dissolve its charter, be required to make a report for income tax purposes, to the Department of Revenue, of any unrealized or unreported income from installment sales made while doing business in this State and to pay any tax which may be due on such income. The manner and form for making such report and paying the tax shall be as prescribed by the Commissioner.

d. If an individual, who has elected to report in the manner prescribed in subdivision (1) a gain from a sale such as described in either subdivision (1) or (2), removes himself from this State, any unrealized or unreported income from such installment sales made while a resident of this State must be reported for income tax purposes on the return filed with this State by such individual for the year in which the individual removes himself from this State unless such individual files a bond with the Commissioner of Revenue in such amount and with such sureties as the Commissioner shall deem necessary to secure the payment of any taxes which were deferred. (1939, c. 158, s. 318; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1949, c. 392, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, rewrote the first sentence of subsection (e), added the present second sentence thereto, added the second and third provisos at the end of subdivision (2) of subsection (g), and added paragraph d to subdivision (3) of subsection (g). As only subsections (e) and (g) were changed the rest of the section is not set out.

Necessity for Reliance on Federal Tax Returns. — Recognizing the practical necessity for the North Carolina Department of Revenue to rely upon tax returns accepted by the Federal Internal Revenue Service for a proper reflection of taxable income upon foreign corporations, the General Assembly enacted this section. In re Virginia-Carolina Chemical Corp., 248 N. C. 531, 103 S. E. (2d) 823 (1958).

Cited in Watson v. Watson Seed Farms, Inc., 253 N. C. 238, 116 S. E. (2d) 716 (1960).

§ 105-143. Subsidiary and affiliated corporations.—The net income of a corporation doing business in this State which is a subsidiary or affiliate of another corporation shall be determined by eliminating all payments to or charges by the parent corporation or other subsidiaries or affiliates of the parent

corporation in excess of fair compensation for all services performed for or commodities or property sold, transferred, leased, or licensed to the parent or to its other subsidiary or affiliated corporations by the corporation doing business in this State. If the Commissioner of Revenue shall find as a fact that a report by such subsidiary or affiliated corporation does not disclose the true earnings of such corporation on its business carried on in this State, the Commissioner may require that such subsidiary or affiliated corporation file a consolidated return of the entire operations of such parent corporation and of its subsidiaries and affiliates, including its own operations and income, and may determine the true amount of net income earned by such subsidiary or affiliated corporation in this State by taking the factor of investment in real estate and tangible personal property in this State and volume of business in this State and by relating these factors to the total investment of the parent corporation and its subsidiaries and affiliated corporations in real estate and tangible personal property in and out of this State and their total volume of business in and out of this State. The authority hereby given to require consolidated returns as aforesaid and to ascertain the true amount of income earned in this State on the basis herein prescribed may also be used by the Commissioner as the basis of ascertaining the true net income earned in this State during the calendar year one thousand nine hundred and forty and for the three calendar years prior thereto. For the purposes of this section, a corporation shall be deemed a subsidiary of another corporation hereby designated the parent corporation, when, directly or indirectly, it is subject to control by such other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether such control is direct or through one or more subsidiary, affiliated, or controlled corporations, and a corporation shall be deemed an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether such control be direct or through one or more subsidiary, affiliated or controlled corporations. Upon such finding by the Commissioner, the consolidated returns authorized by this section may be required whether the parent or controlling corporation or interest or its subsidiaries or affiliates are or are not doing business in this State. The provisions of this paragraph do not apply to corporations subject to regulations by a regulatory body of this State which are required to maintain accounts in such manner as to reflect separately the business done in this State and file a report thereof with such regulatory body. This paragraph shall not apply unless the Commissioner further finds that the business in this State is handled or effected in such manner as to distort or not reflect the true income earned in this State and finds in addition either or both of the following facts:

(1) That the several corporations are owned or controlled by the same financial interests or

(2) That they are members of a group of corporations associated together in carrying on a unitary business or are branches or parts of a unitary business or are engaged in different phases of the same general business or industry.

If such consolidated return is required and is not filed within sixty days after demand, said subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file returns and in addition shall be subject to the penalty provided in § 105-230, and in such event the provisions of G. S. 105-236 shall apply.

Every subsidiary of a parent corporation doing business in this State shall not be allowed to deduct interest on indebtedness owed to or endorsed or guaranteed by the parent corporation and used by the subsidiary in carrying on its business in

this State. The term "indebtedness" used in this paragraph shall include all loans, credits, goods, supplies or other capital of whatsoever nature furnished by the parent corporation, or by any subsidiary of the parent corporation. The term "parent corporation" shall include any subsidiary of the parent corporation. If any part of the capital used by the parent corporation is borrowed capital, the subsidiary may deduct from its gross income interest paid to the parent corporation or paid upon indebtedness endorsed or guaranteed by the parent corporation in such proportion as the borrowed capital of the parent corporation is to the total assets of such parent corporation. The term "borrowed capital" shall mean the outstanding indebtedness (other than interest due) of the taxpayer, incurred in good faith for the purpose of the business, which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, deed of trust, bank loan agreement, or conditional sales contract.

Such subsidiary or affiliated corporation shall incorporate in its returns required under this section and article such information as the Commissioner may reasonably require for the determination of the net income taxable under this article, and shall furnish such additional information as the Commissioner may reasonably require. If the return does not contain the information therein required or such additional information is not furnished within thirty days after demand, the corporation shall be subject to a penalty of one hundred dollars a day for each day's omission, in addition to the penalty provided in § 105-230.

If the Commissioner finds that the determination of the income of a subsidiary or affiliated corporation under a consolidated return as herein provided will produce a greater or lesser figure than the amount of income earned in this State, he may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this State; and if the corporation contends the figure produced is greater than the earnings in this State, it shall, within thirty days after notice of such determination, file with the Commissioner a statement of its objections and of an alternative method of determination with such detail and proof as the Commissioner may require, and the Commissioner shall consider the same in determining the income earned in this State. In making such determination the findings and conclusions of the Commissioner shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong. (1939, c. 158, s. 318½; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1959, c. 1259, ss. 4, 8.)

Editor's Note.—

The 1959 amendment changed the second paragraph by substituting "G. S. 105-236" for "subsection (e) of § 105-161." It changed the third paragraph by inserting in the next to the last sentence the words "or paid upon indebtedness endorsed or guaranteed by the parent corporation," and rewriting the last sentence.

Cited in Good Will Distributors (Northern), Inc. v. Shaw, 247 N. C. 157, 100 S. E. (2d) 334 (1957).

§ 105-144. Determination of gain or loss.—(a) Except as provided in subsection (c1) of this section, in ascertaining the gain or loss from the sale or other disposition of property:

(1) For property acquired after January 1, 1921 and before July 1, 1963, the basis shall be the cost thereof; provided, however, that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this article, such inventory value shall be the basis in lieu of cost.

(2) For property acquired before January 1, 1921, the basis for the purpose of ascertaining gain, shall be the fair market value of the property at January 1, 1921, or the cost of the property, whichever is greater; and the basis for determining loss, shall be the cost of the property in all cases, if such cost is known or determinable.

(3) For property acquired on or after July 1, 1963, the basis shall be as follows:

a. For property acquired by purchase, the cost thereof, provided that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this article, such inventory value shall be used in lieu of cost.

b. For property acquired by gift, the same basis as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if the basis (as adjusted) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value; provided that if a gift tax is paid to this State with respect to such property the basis shall be increased by the amount of the gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

c. For property acquired by bequest, devise, or descent, either the fair market value at the date of death of the former owner, or in the case of an election under G. S. 105-9.1 the fair market value at the alternate valuation date at which time a value is established for inheritance tax purposes.

The basis of property so determined under this subsection (a) shall be adjusted for capital additions or losses applicable to the property and for depreciation, amortization, and depletion, allowed or allowable.

(a1) Property received in liquidation under subsection (c1), if

(1) Property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock, and

(2) With respect to such acquisition

a. Gain was realized, but

b. As the result of an election made by the shareholder under subsection (c1) of this section, the extent to which gain was recognized was determined under subsection (c1) of this section,

then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him.

(b) Except as hereinafter provided in subsection (c) or in subsection (c1) of this section, the final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him, and the gain or loss shall be computed accordingly.

(c1)

(1) General Rule.—In the case of property distributed in complete liquidation of a corporation, if

a. The liquidation is made in pursuance of a plan of liquidation adopted on or after June 21, 1961; and

b. The distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month,

then in the case of each qualified electing shareholder (as defined in subdivision (3) gain on the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subdivisions (5) and (6).

(2) Excluded Corporation.—For purposes of this section, the term "excluded corporation" means a corporation which at any time between June 21, 1961, and the date of the adoption of the plan of liqui-

dation, both dates inclusive, was the owner of stock possessing fifty per cent (50%) or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(3) Qualified Electing Shareholders.—For purposes of this section, the term "qualified electing shareholder" means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of subdivision (1) has been made and filed in accordance with subdivision (4), but

a. In the case of a shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least eighty per cent (80%) of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation; or

b. In the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which at the time of adoption of such plan of liquidation are owners of stock possessing at least eighty per cent (80%) of the total combined voting power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(4) Making and Filing of Elections.—The written elections referred to in subdivision (3) shall be deemed to have been made and filed if, and only if, such written elections were duly made and filed for federal income tax purposes in conformity with the provisions of § 333 of the 1954 Internal Revenue Code and the regulations thereunder.

(5) Noncorporate Shareholders.—In the case of a qualified electing shareholder other than a corporation

a. There shall be recognized, and treated as ordinary income, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after January 1, 1921, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subdivision (1), paragraph b, but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

b. There shall be recognized and treated as gain so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after June 21, 1961, exceeds his ratable share of such earnings and profits.

(6) Corporate Shareholders.—In the case of a qualified electing shareholder which is a corporation, the gain shall be recognized only to the extent of the greater of the two following:

a. The portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after June 21, 1961;

b. Its ratable share of the earnings and profits of the liquidating corporation accumulated after January 1, 1921, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subdivision (1), paragraph b, but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

(1961, c. 1093; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1961 amendment rewrote subsection (a), inserted the reference to subsection (c1) in subsection (b) and added subsections (a1) and (c1).

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, again rewrote subsection (a).

Only the subsections mentioned are set out.

§ 105-144.1. Involuntary conversions; recognition of gain.—(a) General Rule.—If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(1) Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property occurred after December 31, 1958, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

a. If the taxpayer during the period specified in subparagraph b for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. For purposes of this paragraph—

1. No property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

2. The taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of this article.

b. The period referred to in subparagraph a shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence or requisition or condemnation of the converted property, whichever is the earlier, and ending—

1. One year after the close of the first taxable year in which

any part of the gain upon the conversion is realized, or

2. Subject to such terms and conditions as may be specified by the Commissioner of Revenue, at the close of such later date as the Commissioner of Revenue may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Commissioner of Revenue may prescribe.

c. If a taxpayer has made the election provided in subparagraph a then—

1. The statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of three years from the date the Commissioner of Revenue is notified by the taxpayer of the replacement of the converted property or of an intention not to replace, and

2. Such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of law which would otherwise prevent such assessment.

d. If the election provided in subparagraph a is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(b) If the property was acquired, after January 1, 1921, as the result of a compulsory or involuntary conversion described in subsection (a) (1), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. In the case of property purchased by the taxpayer in a transaction described in subsection (a) (2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(c) For purposes of this section, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(d) For purposes of this section, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought.

(e) As used in this section, the term "control" means the ownership of stock possessing at least eighty per centum (80%) of the total combined voting power of all classes of stock entitled to vote, and at least eighty per centum (80%) of the total number of shares of all other classes of stock of the corporation.

(f) (1) For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a) (2) a.

(g) In the administration of this section, the Commissioner may, in his discretion, apply the federal rules and regulations, rulings, and federal court decisions pertinent to the administration and construction of § 1033 of the Federal Internal Revenue Code of 1954, but the Commissioner shall not be bound by such rules and regulations, rulings and decisions. (1949, c. 1171; 1959, c. 1259, s. 4.)

Editor's Note.—The 1959 amendment rewrote this section.

§ 105-144.3. Bond premium amortization by bondholder. — (a) Amortization of bond premiums on tax-exempt bonds shall be mandatory for all taxpayers. Amortization for the taxable year shall be accomplished by lowering the basis or adjusted basis of the bond, with no deduction against gross income for the year.

(b) Amortization of bond premiums on taxable bonds shall be elective for all taxpayers. The amortizable premium for the taxable year may be deducted only if an adjustment is made to the basis of the bond.

(c) For purposes of this section, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation and bearing interest and includes any like obligation issued by any government or political subdivision thereof. (1957, c. 1340, s. 4; 1963, c. 1169, s. 2.)

Editor's Note. — The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, rewrote this section.

§ 105-144.4. Stock distribution pursuant to antitrust laws.—(a) Effect on Distributees.

(1) General Rule.—If a corporation (referred to in this section as the "distributing corporation") distributes to a shareholder, with respect to its stock held by such shareholder, stock which, when distributed to the distributee, is divested stock (as defined in subsection (d)) then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder on the receipt of such divested stock.

(2) Non-Prorata Distribution, etc.— Paragraph (1) shall be applied without regard to the following:

a. Whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation, and

b. Whether or not the shareholder surrenders stock in the distributing corporation.

(3) Distributions to Avoid Federal Income Tax.—Paragraph (1) shall not apply to any transaction one of the principal purposes of which is the distribution of the earnings and profits of the distributing corporation or of the corporation whose stock is distributed, or both (but the mere

fact that either corporation has accumulated earnings and profits shall not be construed to mean that one of the principal purposes of the transaction is the distribution of the earnings and profits of either corporation, or both).

(4) Distribution Involving Gift or Compensation.—In the case of a distribution to which paragraph (1) applies, but which

a. Results in a gift, see § 105-188 et seq. of the General Statutes, or

b. Has the effect of the payment of compensation, see § 105-141 of the General Statutes.

(b) Basis of Property Acquired in Distributions.—If, by reason of subsection (a), gain or loss is not recognized with respect to the receipt of divested stock, then, under regulations prescribed pursuant to G. S. 105-262:

(1) If the divested stock is received by a shareholder without the surrender by such shareholder of stock in the distributing corporation, the basis of such divested stock and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating the adjusted basis of the stock with respect to which the distribution was received between such stock and the divested stock received; or

(2) If the divested stock is received by a shareholder in exchange for stock in the distributing corporation, the basis of the divested stock shall, in the distributee's hands, be the same as the adjusted basis of the stock exchanged therefor.

(c) Allocation of Earnings and Profits.

(1) Allocation in Certain Corporate Separations.—In the case of a distribution or exchange under subsection (a) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed pursuant to G. S. 105-262.

(2) Definition of Controlled Corporation.—For the purposes of paragraph (1), the term "controlled corporation" means a corporation with respect to which at least eighty per cent (80%) of the total combined voting power of all classes of stock entitled to vote and at least eighty per cent (80%) of the total number of shares of all other classes of stock is owned by the distributing corporation.

(d) Definition of Divested Stock.—For the purposes of this section, the term "divested stock" means stock which is

(1) The subject of a judgment, decree, or other order of a court or of a commission or board authorized to enforce compliance in a suit or other proceeding brought by the United States or such a commission or board under the Sherman Act (26 Stat. 209, 15 U. S. C. sec. 1-7, as amended) and the Clayton Act (38 Stat. 730, 15 U. S. C. sec. 12-27, as amended), and

(2) Distributed by the distributing corporation pursuant to a judgment, decree, or order entered after June 1, 1958, in such suit or proceeding, if such judgment, decree, or order

a. Directs the distributing corporation to divest itself of such stock,

b. Specifies and itemizes the stock to be divested,

c. Recites that such divestment is necessary or appropriate to effectuate the policies of the Sherman Act or the Clayton Act, or both, and

d. Recites that nonrecognition of gain pursuant to § 1111 of the Internal Revenue Code of 1954 is required to reach an equitable judgment, decree, or order in such suit or proceeding. (1959, c. 1131.)

Editor's Note.—The act inserting this section provides that it shall apply to any stock distribution pursuant to antitrust laws, as referred to herein, which occurs on or after January 1, 1959.

§ 105-145. Exchanges of property.

(c) (1) No gain or loss to a stockholder shall be recognized when a corporation, which is a party to a reorganization, in pursuance of the plan of reorganization, and in exchange solely for its own stock or securities, or without the transfer to it by or on account of its stockholders of any property, distributes to its stockholders stock or securities in one or more other corporations, each of which is also a party to the reorganization. No gain or loss to the holder of any security issued by a corporation shall be recognized when such corporation is a party to a reorganization and, in pursuance of the plan of reorganization and in exchange solely for securities issued by it, distributes to the holders of such securities stock or securities in one or more other corporations each of which is also a party to the reorganization.

(2) No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(3) As used in this section, the term "reorganization" shall mean:

a. A statutory merger or consolidation.

b. The acquisition by one corporation, in exchange solely for all or a part of its voting stock, of stock of another corporation which the acquiring corporation controls immediately after such acquisition (whether or not it had control immediately before the acquisition).

c. The acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which controls the acquiring corporation), of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, is disregarded.

d. A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or one or more of its shareholders (including those who were shareholders immediately before the acquisition) or any combination thereof is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed to the shareholders tax-free or partially tax-free.

e. A recapitalization.

f. A mere change in identity, form, or place of organization, however effected.

(4) As used in this section, the term "a party to a reorganization" includes the corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another, and the term "control" means the ownership of stock possessing at least eighty per cent (80%) of the total combined voting power of all classes of

stock entitled to vote and at least eighty per cent (80%) of the total number of shares of all other classes of stock of the corporation.

(e) In administering this section and in interpreting the clause "property of like kind," the Commissioner shall whenever applicable use as a guide the federal rules and regulations in the administration of § 1031 of the Federal Internal Revenue Code of 1954 to the extent that same are not in conflict with the provisions of this section. (1939, c. 158, s. 320; 1943, c. 400, s. 4; 1955, c. 1239, ss. 1-3; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1959 amendment added subsection (e) to this section.

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, rewrote the definition of "reorganization" in subdivision (3) of subsection (c).

As only subsections (c) and (e) were affected by the amendments the rest of the section is not set out.

§ 105-147. Deductions.

(5) All interest paid during the income year except interest paid or accrued in connection with the ownership of real or personal property from which income is derived but is not taxable under this article, and except interest paid by a subsidiary to a parent corporation as defined in G. S. 105-143.

(6) a. Taxes paid or accrued during the income year except those taxes with respect to which a deduction is denied under paragraph b of this subdivision.

b. No deduction shall be allowed for the following taxes:

1. Taxes on net income by whatever name called and excess profits taxes.
2. Gift, inheritance, and estate taxes.
3. Federal tax on undistributed earnings.
4. Sales taxes, gasoline taxes, automobile license, and registration fees, unless incurred in the operation of a trade or business.
5. Social security and unemployment taxes paid by an employee or self-employed person.
6. That part of social security and unemployment taxes required to be deducted by the employer from the earnings of an employee.
7. Taxes or assessments assessed for local benefit of a kind tending to increase the value of property assessed.
8. Taxes paid or accrued in connection with the ownership of real or tangible personal property from which income is derived but is not taxable under this article.

(7) Dividends from stock issued by any corporation to the extent herein provided. As soon as may be practicable after the close of each calendar year, the Commissioner of Revenue shall determine from each corporate income tax return filed with him during such year, and due from the filing corporation during such year, the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G. S. 105-134, except as provided herein; if a corporation has a net taxable income in North Carolina and a net loss from all sources wherever located, or, if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Commissioner shall require the use of the allocation ratio determined under the provisions of subdivision or item (6) of G. S. 105-134. A taxpayer who is a stockholder in any such corporation

shall be allowed to deduct from his gross income the same proportion of the dividends received by him from such corporation during his income year ending at or after the end of such calendar year. No deduction shall be allowed for any part of any dividend received by such taxpayer from any corporation which filed no income tax return with the Commissioner of Revenue during such calendar year. Dividends received by a taxpayer from stock in any insurance company of this State taxed under the provisions of § 105-228.5 shall be deductible from the gross income of such taxpayer, and a proportionate part of any dividends received from stock in any foreign insurance corporation shall be deductible, such part to be determined on the basis of the ratio of premiums reported for taxation in this State to total premiums collected both in and out of the State. Dividends received by a taxpayer from stock in any bank or trust company in this State taxed under the provisions of article 8C of subchapter I of this chapter shall be deductible. A taxpayer shall be allowed to deduct such proportionate part of dividends received by him from a North Carolina regulated investment company, as defined in § 105-138 as represents and corresponds to income received by such regulated investment company which would not be taxed by this State if received directly by the North Carolina corporation or resident.

Where a taxpayer is the beneficiary of a distributable trust and where dividend income is received by the trust and paid by the trustee to the beneficiary, the dividends or the portion of such dividends which would otherwise be deductible under the provisions of this section shall be deductible to the beneficiary if such dividends are distributed or distributable to the beneficiary during the taxable year and are included in the gross income of the beneficiary except that the deduction of the same dividends may not be claimed by both the fiduciary and the beneficiary. The amount of the deduction by the beneficiary shall be that portion of his income received from the trust as the deductible portion of dividends received as income by the trust bears to the net income of the trust from all sources taxable under this article. Provided, in no case may the deduction claimed by the beneficiary exceed the income distributed or distributable to such beneficiary.

No deduction of dividends the income from which is separately allocated under the provisions of § 105-134 shall be made by a corporation in computing its net apportionable income. The deductible portion of such dividends shall be subtracted from the dividend income prior to the allocation of the latter either within or without this State as provided in subdivision (2) of § 105-134.

(9) Losses of such nature as designated below:

a. Losses of capital or property used in trade or business actually sustained during the income year except that: No deduction shall be allowed for losses arising from personal loans, endorsements or other transactions of a personal nature not entered into for profit; and losses of such character as specified in paragraph c below shall be deductible only to the extent therein provided.

b. Losses of property not connected with a trade or business sustained in the income year if arising from fire, storm, shipwreck or other casualties or theft to the extent such losses are not compensated for by insurance or otherwise.

c. Losses incurred in the income year from the sale of corporate

shares or bonds of corporations or governments, or from transactions in commodity futures contracts. Provided, that in the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities, other than transactions in commodity futures contracts, where it appears that, within a period beginning thirty days before the date of such sale or disposition and ending thirty days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law) or has entered into a contract or option so to acquire substantially identical stock or securities then no deduction for the loss shall be allowed unless the taxpayer is a dealer in stocks or securities and the loss is sustained in a transaction made in the ordinary course of its business; if the property consists of stock or securities the acquisition of which (on the contract or option to acquire which) resulted in the nondeductibility under this section of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the stock was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of; if the amount of stock or securities acquired (or covered by the contract or option to acquire) is greater than the amount of stock or securities sold or otherwise disposed of, then the provisions herein with respect to the adjustment of the basis of the stock or securities acquired (or covered by the contract or option to acquire) shall not apply to that portion of the amount of stock or securities acquired (or covered by the contract or option to acquire) which shall be in excess of the amount of the stock or securities sold; if the amount of the stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the provisions hereof with respect to disallowance of loss claimed to have been sustained from the sale or other disposition of stock or securities shall not apply to the portion of the amount thereof in excess of the amount of the stock or securities acquired (or covered by the contract or option to acquire).

d. Losses in the nature of net economic losses sustained in any or all of the five preceding income years arising from business transactions or to capital or property as specified in a and b above subject to the following limitations:

1. The purpose in allowing the deduction of net economic loss of a prior year or years is that of granting some measure of relief to taxpayers who have incurred economic misfortune or who are otherwise materially affected by strict adherence to the annual accounting rule in the determination of taxable income, and the deduction herein specified does not authorize the carrying forward of any particular items or category of loss except to the extent that such loss or losses shall result in the impairment of the net economic situation of the

taxpayer such as to result in a net economic loss as hereinafter defined.

2. The net economic loss for any year shall mean the amount by which allowable deductions for the year other than personal exemptions, nonbusiness deductions and prior year losses shall exceed income from all sources in the year including any income not taxable under this article.

3. Any net economic loss of a prior year or years brought forward and claimed as a deduction in any income year may be deducted from taxable income of the year only to the extent that such carry-over loss from the prior year or years shall exceed any income not taxable under this article received in the same year in which the deduction is claimed, except that in the case of taxpayers required to apportion to North Carolina their net apportionable income, as defined in this article, only such proportionate part of the net economic loss of a prior year shall be deductible from the income taxable in this State as would be determined by the use of the apportionment ratio computed under the provisions of G. S. 105-134 or of subsection (c) of G. S. 105-142, as the case may be, for the year of such loss.

4. A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of such loss may be carried forward to a succeeding year. If there is any income taxable or nontaxable in a succeeding year not otherwise offset only the balance of any carry-over loss may be carried forward to a subsequent year.

5. No loss shall either directly or indirectly be carried forward more than five years.

(11) a. Amounts expended by an individual during the year for medical care for himself, herself, his or her qualifying spouse and his or her dependents, to the extent that the total of such expenses actually paid in the income year and not compensated for by insurance or otherwise shall exceed five per cent (5%) of his or her adjusted gross income; provided, that the total allowable deduction in any taxable year shall not exceed five thousand dollars ($5,000.00).

b. For the purpose of this subdivision:

1. The term "medical care" means amounts paid for the diagnosis, care, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body; for transportation primarily for and essential to medical care; and for insurance against illness or accident other than insurance against loss of earnings.

2. The term "qualifying spouse" means a spouse who has not claimed a two thousand dollar ($2,000.00) personal exemption.

3. The term "dependents" means those individuals qualifying as dependents under the provisions of subdivision (5) of subsection (a) of G. S. 105-149.

(12) A reasonable allowance for depreciation and obsolescence of property used in the trade or business, which allowance shall be measured by the estimated life of such property; and in the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion.

The cost of property acquired on or since January 1, 1921, plus the cost of additions and improvements, shall be the basis for determining the amount of the allowance for depreciation and obsolescence. If the property was acquired prior to January 1, 1921, the book value of the property as of that date shall be the basis for determining the amount of the allowance for depreciation and obsolescence. Notwithstanding the provisions of the two preceding sentences, the basis for determining the amount of the allowance for depreciation and obsolescence shall be the book value of the property in all cases in which the federal government uses the book value to determine the deduction allowed by it for depreciation or obsolescence under the provisions of § 167 of the Internal Revenue Code of 1954.

For any income years ending after December 31, 1953, the amount of the deduction for depreciation and obsolescence shall be computed by the same method used by the taxpayer in computing the income tax due from the taxpayer to the United States for such income year if such method is pursuant to the provisions of § 167 of the Internal Revenue Code of 1954. If such taxpayer files no income tax return for such income year with the United States under the Internal Revenue Code of 1954 or files such a return but no deduction is claimed therein for depreciation or obsolescence or the deduction claimed therein for depreciation or obsolescence is not computed pursuant to § 167 of the Internal Revenue Code of 1954, a reasonable allowance for depreciation and obsolescence shall be determined in accordance with regulations to be established by the Commissioner of Revenue or, in the absence of such regulation, pursuant to the straight line method.

In determining a reasonable allowance for depletion of mines, oil and gas wells, and other natural deposits the cost of development not otherwise deducted will be allowed as depletion, and in the case of leases, the deduction allowed may be equitably apportioned between the lessor and the lessee.

The basis for determining the allowance for depletion shall be the book value of the property in all cases in which the federal government uses the book value to determine the deduction allowed by it for depletion under the provisions of the Internal Revenue Code of 1954.

Notwithstanding any other provisions of this section, the allowances for depletion under this section in the case of certain mines and other natural deposits listed below shall be a certain per centum of the gross income from the property during the taxable year, as specified in the schedule below for the mines and natural deposits therein listed, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect to the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph. The schedule is as follows:

a. In the case of coal, asbestos, brucite, dolomite, magnesite, per-

lite, wollastonite, calcium carbonates, and magnesium carbonates, 10 per centum;

b. In the case of metal mines, aplite, bauxite, fluorspar, flake graphite, vermiculite, beryl, garnet, feldspar, mica, talc (including pyrophyllite), lepidolite, spodumene, barite, ball clay, sagger clay, china clay, phosphate rock, rock asphalt, trona, bentonite, gilsonite, thenardite, borax, fuller's earth, tripili, refractory and fire clay, quartzite, diatomaceous earth, metallurgical grade limestone, chemical grade limestone, potash, monazite, and other radioactive minerals, 15 per centum; and

c. Notwithstanding any other provisions of this section, in the case of oil and gas wells the allowance for depletion under this section shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property.

Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under this section be less than it would be if computed without reference to this paragraph. Federal rules and regulations shall be applicable in interpreting and applying per centum depletion allowances in accordance with the schedule set out above. Percentage depletion shall not be allowed for any minerals which are used, or sold for use as riprap, ballast, road material, rubble concrete, aggregates, building or construction material, or for similar purposes.

(15) Contributions or gifts made by individuals, firms, partnerships and corporations within the income year to corporations, trusts, community chests, funds, foundations or associations organized, and operated exclusively for religious, charitable, literary, scientific, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or contributions or gifts made by individuals, firms, partnerships and corporations within the income tax year to posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual, or the organization known as Alcoholics Anonymous or any local chapter thereof: Provided, that in the case of such contributions or gifts by corporations, the amount allowed as a deduction hereunder shall be limited to an amount not in excess of five per centum (5%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (16) of this section; and, provided further, that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (18) c of this section; and, provided, that in the case of such contributions or gifts by partnerships such amounts shall be allocated to each partner on the basis of the ratio used for determining each partner's share of the distributive gain or loss of the partnership, and shall be claimed to the extent allowable on each partner's individual return; and, provided further, that in the case of such contributions or gifts by individuals, the amount allowed as a deduction shall be limited to an amount not in excess of

fifteen per centum (15%) of the individual's adjusted gross income.

(16) Contributions by persons and corporations to the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and contributions or gifts by persons or corporations to educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(18) a. In the case of a nonresident individual, firm or partnership, the deductions allowed in this section (with the exception of deductions allowed by subdivisions (15) and (16) of this section) shall be allowed only if and to the extent that they are connected with income arising from sources within the State; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the State shall be determined under rules and regulations prescribed by the Commissioner of Revenue.

b. In the case of a nonresident individual, firm or partnership, deductions as provided for and as limited by subdivisions (15) and (16) of this section shall be allowed only if the donees shall have an office in this State and be actively engaged in this State in performing the functions for which the said donees were organized.

c. Corporations allocating a part of their total net income outside North Carolina under the provisions of G. S. 105-134 shall deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under subdivisions (15) and (16) of this section or made through North Carolina offices or branches of other donees qualified under the above-mentioned subdivisions of this section; provided, such deductions for contributions made to North Carolina donees qualified under subdivision (15) of this section shall be limited in amount to five per cent (5%) of the total income allocated to North Carolina as computed without the benefit of this deduction for contributions.

(21) Payments made by a divorced or estranged spouse to his or her spouse who is living separate and apart from the spouse making such payment for the separate support and maintenance of such spouse, except that only such amounts may be deducted under this subdivision as are includable in the gross income of the spouse receiving such payments under the provisions of G. S. 105-141.2. Provided, that any individual who reports his income to the State of North Carolina on the accrual basis may claim the deduction authorized by this subdivision if the payments claimed as a deduction are actually made within the time fixed by statute for filing the taxpayer's return.

(22) Individual income taxpayers whose income is reportable to the State for income tax purposes, may, at their option, under such rules and regulations as the Commissioner of Revenue may prescribe, elect to claim a standard deduction equal to ten per cent (10%) of their adjusted gross income or five hundred dollars ($500.00), whichever is the lesser, in lieu of all deductions other than those incurred in the deriving of the income and other than personal exemptions and dependency deductions provided that where both spouses have income taxable in this State and one spouse elects to take credit for

the standard deduction provided herein, the other spouse must also take such standard deduction. For the purpose of this subdivision, the phrase "adjusted gross income" shall mean adjusted gross income as defined in G. S. 105-141.3 of this article.

Provided, further, that the provisions of this subdivision shall not apply to taxpayers who are not residents of this State.

(1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1959 amendment rewrote the first paragraph of subdivision (7) and substituted "net" for "gross" in line twelve of the second paragraph. It also added the last sentence to the last paragraph of subdivision (12).

The first 1961 amendment struck out the colon after the word "individual" in line thirteen of subdivision (15), inserted a comma in lieu thereof, and added the following: "or the organization known as Alcoholics Anonymous or any local chapter thereof:". Section 2 of the amendatory act made it applicable to all gifts or contributions made to Alcoholics Anonymous or any local chapter thereof on or after January 1, 1961.

The second 1961 amendment, effective as of Jan. 1, 1961, rewrote subdivision (18).

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, rewrote the first sentence of subdivision (5) and deleted the second sentence thereof; rewrote subdivision (6); added the third sentence to the second paragraph of subdivision (7); substituted "personal exemptions, nonbusiness deductions and prior year losses" for "contributions, personal exemptions, prior year losses, taxes on property held for personal use, and interest on debts incurred for personal rather than business purposes" in subparagraph 2, deleted former subparagraph 5, and redesignated subparagraph 6 as subparagraph 5 in paragraph d of subdivision (9); rewrote subdivision (11); substituted the present four provisos at the end of subdivision (15) for the former two provisos; added the provisions as to contributions to educational institutions at the end of subdivision (16); rewrote paragraph c of subdivision (18), making the deduction mandatory and deductible from total, instead of net, income allocable to North Carolina; deleted the former second sentence of subdivision (21) and also the word "further" near the beginning of the present second sentence of that subdivision; and deleted the former second proviso at the end of the first sentence of subdivision (22), defining "adjusted gross income" and added the second sentence thereto.

Only the subdivisions changed are set out.

For notes as to employees' death benefits and the relation between trust income and beneficiary income under the 1957 amendments, see 36 N. C. Law Rev. 163, 166.

Constitutionality of Subdivision (18).— Subdivision (18) of this section, limiting the right of a nonresident taxpayer, in computing his net income taxable by this State, to claim only those deductions which are related to his business in this State, is valid and does not constitute an unlawful discrimination in that residents of this State are permitted personal deductions not allowed to the nonresident, since only the income of the nonresident earned within this State is subject to income taxes here. Stiles v. Currie, 254 N. C. 197, 118 S. E. (2d) 428 (1961).

Determination of Deduction of Loss for Prior Years.—

The 1957 amendment to subdivision (9) d enlarges the time for a loss carry-over and permits a taxpayer, in computing its income tax for the year 1957, to bring forward losses for the prior five years as a credit against income. Royle & Pilkington Co. v. Currie, 250 N. C. 726, 110 S. E. (2d) 339 (1959).

Deduction by Successor Corporation of Loss Sustained by Submerged Corporation.—Whether a successor corporation is entitled to deduct from its gross income an economic loss sustained by another corporation depends upon whether the successor corporation is for practical purposes the same and is engaged in continuing the business of the kind and character conducted by the corporation whose loss is claimed as a deduction. Good Will Distributors (Northern), Inc. v. Shaw, 247 N C. 157, 100 S. E. (2d) 334 (1957); Good Will Distributors, Inc v. Currie, 251 N. C. 120, 110 S. E. (2d) 880 (1959).

Where a corporation surviving a merger seeks to establish its right to deduct from its gross income an economic loss of one of its submerged corporations for a prior year as a carry over under this section, and it appears from the facts alleged that the submerged corporation had a profit in the months of the fiscal year prior to the merger and that it had deducted its prior

economic loss from such net income, leaving a balance on the loss side, and further, that as far as the facts alleged disclosed, to allow the surviving corporation to make such deduction would result in reducing the surviving corporation's income tax liability which had accrued on the date of the merger, such deduction by the surviving corporation was disallowed. Good Will Distributors (Northern), Inc. v. Shaw, 247 N. C. 157, 100 S. E. (2d) 334 (1957).

The enactment of loss carry-over legislation by the General Assembly was purely a matter of grace. The provision should not be construed to give a "windfall" to a taxpayer who happens to have merged with other corporations. Its purpose is not to give a merged taxpayer a tax advantage over others who have not merged. Good Will Distributors, Inc. v. Currie, 251 N. C. 120, 110 S. E. (2d) 880 (1959).

Deduction for Depletion Not Required to Be on Basis of Cost. — Deduction on basis of percentage of cost is applicable to depreciation and not to depletion. A reasonable allowance is provided for depletion. There is no requirement it should be on the basis of cost. In re Virginia-Carolina Chemical Corp., 248 N. C. 531, 103 S. E. (2d) 823 (1958).

Prior to the 1953 amendment to this section, the section permitted a reasonable allowance for depletion without requiring that it should be calculated on percentage of cost; the 1953 amendment made mandatory that which was permissible before. In re Virginia-Carolina Chemical Corp., 248 N. C. 531, 103 S. E. (2d) 823 (1958).

Payments Made to Deceased Employee's Estate, Widow or Heirs.—Prior to the 1957 amendment of subdivision (23) of this section, payments by an employer in discharge of its legal obligations to compensate its employee were deductible. Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

There appears to be a statutory correlation between § 105-147 (23) and the last paragraph of § 105-141 (a). Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

The contention that payments by an employer to the widow of an employee are allowable as deductions only when a legal obligation to make such payments exists would seem to render meaningless the 1957 amendment of subdivision (23) of this section. Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

The 1957 amendment of subdivision (23) of this section makes no reference to a previous or pre-existing "contract, resolution of the board of directors, or custom," of the corporation with respect to payments by an employer to a deceased employee's estate, widow or heirs. Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

Payments by an employer to the widow of a deceased executive were authorized and allowable as deductions under subdivision (23) of this section in computing employer's net income, and were not taxable as gifts under § 105-188, and no legal significance was attached to the fact that there was no pre-existing plan or policy, or to the fact that the resolution authorizing the payments was not adopted until some thirteen months after the death of the executive, or to the fact that the employer was a so-called family corporation. Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

Cited in American Equitable Assurance Co. v. Gold, 249 N. C. 461, 106 S. E. (2d) 875 (1959); Petition of Vanderbilt University, 252 N. C. 743, 114 S. E. (2d) 655 (1960).

§ 105-148. Items not deductible.—In computing net income no deduction shall in any case be allowed in respect of:

(1) Personal, living, or family expenses.

(2) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.

(3) Premiums paid on any life insurance policy except to the extent that such payments made by the employer are on group life insurance plans for the benefit of the employees, which plans have been approved by the Commissioner of Insurance and which premiums constitute ordinary and necessary business expense.

(4) Sick pay.

(5) Child care payments.

(6) Contributions to individuals.

(7) Commuting expenses.

(8) Contributions to any governmental unit, instrumentality, agency or institution other than those contributions allowable as deductions in subdivisions (15) and (16) of G. S. 105-147. (1939, c. 158, s. 323; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1959 amendment added the exception clause to subdivision (3).

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, rewrote subdivisions (4) and (5), substituted "Commuting" for "Commutation" at the beginning of subdivision (7), and added subdivision (8).

§ **105-149. Exemptions.**—(a) There shall be deducted from the net income the following exemptions:

(1) In the case of a single individual, a personal exemption of one thousand dollars ($1,000.00).

(2) In the case of a married man with a wife living with him, two thousand dollars ($2,000.00). In the case of an individual who qualifies as "head of household" as defined in subdivision (3) of G. S. 105-132, two thousand dollars ($2,000.00); provided that the "head of household" exemption shall not be allowable to a married woman living with her husband except as provided in subsection (c) (2) of G. S. 105-149. Provided, that when a husband living with his wife has a gross income of less than two thousand dollars ($2,000.00), whether taxable under this article or not, and when the wife actually furnishes more than one-half the support for herself and her husband, the husband may by agreement with his wife allow her to claim the two thousand dollars ($2,000.00) exemption provided in this subsection and the husband in such case shall be entitled to claim an exemption of only one thousand dollars ($1,000.00): Provided, further, that if the two thousand dollars ($2,000.00) exemption is taken by the wife, the husband must file a return for the same year, regardless of whether he shall have a taxable income for such year.

(3) A married woman having a separate and independent income, one thousand dollars ($1,000.00).

(4) In the case of a widow or widower having minor child or children, natural or adopted, two thousand dollars ($2,000.00).

(5) Three hundred dollars ($300.00) for each dependent (as defined below) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than one thousand dollars ($1,000.00), or who is a child of the taxpayer either under 19 years of age or a student regularly enrolled for full-time study in a school, college, or other institution of learning. For the purpose of the preceding sentence, the term "child" means an individual who is a son or daughter (natural or adopted), or a stepson or stepdaughter of the taxpayer.

For the purposes of this subsection, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

a. A son or daughter (or a descendant of either), a stepson, a stepdaughter, a brother or sister (including a brother or sister of the half blood), a stepbrother, stepsister, father or mother (or an ancestor of either), a stepfather, a stepmother, a son or daughter of a brother or sister, a brother or sister of the father or mother, a son-in-law, a daughter-in-law, a father-in-law, a mother-in-law, a brother-in-law, or a sister-in-law of the taxpayer;

b. An individual who was a member of the same household as the taxpayer;

c. A former member of the same household as the taxpayer or an individual who otherwise qualifies as a dependent of the taxpayer, who for the taxable year of such taxpayer receives institutional care required by reason of a physical or mental disability.

The exemption provided in this subdivision for children of taxpayers shall be allowed only to the person entitled to the two thousand dollar ($2,000.00) exemption provided in subdivision (2) of this subsection except, however, that where husband and wife are divorced and have children of their marriage for which they would otherwise be entitled to an exemption hereunder, the parent furnishing the chief support of his (or her) child during the income year shall be entitled to said exemption, irrespective of whether said parent has custody of said child or children or is head of the household during said year.

Nothing in this subdivision shall be construed to allow one spouse to claim a three hundred dollar ($300.00) exemption for the other spouse.

(6) In the case of a fiduciary filing a return for that part of the net income of estates or trusts which has not become distributable during the income year, one thousand dollars ($1,000.00). Provided, that in cases where two or more trusts have been established for the benefit of the same individual or beneficiaries the exemption allowed each of such trusts shall be such amount as would be determined by dividing one thousand dollars ($1,000.00) ratably among such trusts in proportion to the corpus of each.

In the case of a fiduciary filing a return for the net income received during the income year of a deceased resident or nonresident individual who has died during the tax year or income year without having made a return, two thousand dollars ($2,000.00) if the individual was a married man, and one thousand dollars ($1,000.00) if the individual was single or a married woman not qualifying as "head of a household."

In the case of a fiduciary filing a return for an insolvent or incompetent individual resident or nonresident where the fiduciary has complete charge of such net income the same exemption to which the beneficiary would be entitled.

(7) In the case of a divorced person having the sole custody of a minor child or children and receiving no alimony for the support of himself, herself, child, or children two thousand dollars ($2,000.00).

(8) In the case of any person who is totally blind, such person shall be entitled to an additional exemption of one thousand dollars ($1,000.00) in addition to all other exemptions allowed by law. Provided, such person shall submit to the Department of Revenue a certificate from a physician, an optometrist or from the State Commission for the Blind certifying that such condition exists.

(1959, c. 1259, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1959 amendment substituted "two thousand dollars ($2,000.00)" for "one thousand dollars ($1,000.00)" in line eight of subdivision (2) of subsection (a).

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, deleted all of the first sentence of subdivision (2) of subsection (a) providing an exemption for the head of a household and inserted the present second sentence therein. It also rewrote subdivision (5) of subsection (a).

As only subsection (a) was affected by the amendments the rest of the section is not set out.

§ 105-151. Tax credits for income taxes paid to other states by individuals.—(a) Individuals who are residents of this State shall be allowed a credit against the taxes imposed by this article for income taxes imposed by and

paid to another state or country on income taxed under this article, subject to the following conditions:

(1) The credit shall be allowed only for taxes paid to such other state or country on income derived from sources within such state or country which is taxed under the laws thereof irrespective of the residence or domicile of the recipient; provided, that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this article and who is deemed also to be a resident of another state or country under the laws of such other state or country the Commissioner of Revenue may, in his discretion, allow a credit against the taxes imposed by this article for such taxes imposed by and paid to such other state or country on income taxed under this article.

(2) The fraction of the gross income for North Carolina income tax purposes which is subject to income tax in another state or country shall be ascertained and the North Carolina net income tax before credit under this section shall be multiplied by such fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or country whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which such taxes are assessed must be filed with the Commissioner of Revenue at, or prior to, the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, must be filed.

(b) If a fiduciary is required to pay a tax to this State for an estate or trust for which he acts which estate or trust is resident in this State and is also resident in another state or country, he shall, notwithstanding the limitations contained in subsection (a) of this section, be allowed a credit against the taxes imposed by this article for income taxes imposed by and paid to such other state or country in accordance with the formula contained in subdivision (2) of subsection (a) of this section and the requirements of subdivision (3) of subsection (a) of this section.

(c) A resident beneficiary of an estate or trust who is taxed under this article on the income received from the estate or trust shall be allowed a credit against the taxes imposed by this article on such income for income taxes paid by the fiduciary to another state or country on such income in accordance with the formula contained in subdivision (2) of subsection (a) of this section and the requirements of subdivision (3) of subsection (a) of this section.

(d) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for such taxes so credited or refunded shall be due and payable from the taxpayer within thirty (30) days from the date of the receipt of the refund or the notice of the credit. If the amount of such tax is not paid within thirty (30) days of receipt or notice the taxpayer shall be subject to the penalties and interest on delinquent payments provided for in subchapter I of this chapter.

(e) If a partnership is engaged in the practice of a profession which either under the laws of this State or under the code of ethics of such profession may not be practiced by a corporation, and such partnership maintains a place of business in this State and also a place of business in another state or country, no member of such partnership who is a resident of this State shall be required to include as a part of his income which is subject to the taxes imposed by this article any part of his share of the gross income of such partnership which is earned in such other state or country in the practice of such profession, and which is subject to income taxes imposed by such other state or country, and

shall not be entitled to deduct under G. S. 105-147 his share of any of the expenses, taxes or losses which are attributable to such partnership's practice of such profession in such other state or country, but the income so excluded shall be shown in his return for the purpose of prorating the exemptions allowed by G. S. 105-149 as therein provided. (1939, c. 158, s. 325; 1941, c. 50, s. 5; c. 204, s. 1; 1943, c. 400, s. 4; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, added the proviso at the end of subdivision (1) of subsection (a). It also, effective Jan. 1, 1964, deleted former subdivision (2) of subsection (a), redesignated former subdivisions (3) and (4) thereof as present subdivisions (2) and (3), deleted former subsection (d), and redesignated former subsections (e) and (f) as present subsections (d) and (e).

§ 105-155. Time and place of filing returns.—Returns shall be in such form as the Commissioner of Revenue may from time to time prescribe, and shall be filed with the Commissioner at his main office, or at any branch office which he may establish. The return of every person reporting on a calendar year basis shall be filed on or before the fifteenth day of April in each year, and the return of every person reporting on a fiscal year basis shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. The return of a corporation reporting on a calendar year basis shall be filed on or before the fifteenth day of March in each year, and the return of a corporation reporting on a fiscal year basis shall be filed on or before the fifteenth day of the third month following the close of the fiscal year. In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Commissioner may allow further time for filing returns. Any corporation which shall dissolve or withdraw from business in this State shall file its return for the then current income year within seventy-five days after the date of such dissolution or withdrawal.

There shall be annexed to the return the affirmation of the taxpayer making the return in the following form: "I hereby affirm that this return, including the accompanying schedules and statements (if any) has been examined by me, and, to the best of my knowledge and belief, is true and complete and is made in good faith covering the taxable period stated, pursuant to the Revenue Act of one thousand nine hundred and thirty-nine, as amended and the regulations issued under authority thereof, and that this affirmation is made under the penalties prescribed by law." The Commissioner shall cause to be prepared blank forms for the said returns, and shall cause them to be distributed throughout the State, and to be furnished upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required. (1939, c. 158, s. 329; 1943, c. 400, s. 4; 1951, c. 643, s. 4; 1953, c. 1302, s. 4; 1955, c. 17, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, deleted the former second sentence of the second paragraph.

§ 105-156. Failure to file returns; supplementary returns. — If the Commissioner of Revenue shall be of the opinion that any taxpayer has failed to file a return or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return or supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this article. If from a supplementary return or otherwise the Commissioner finds any items of income, taxable under this article, have been omitted from the original return, or any items returned as taxable that are not taxable, or any item of taxable income overstated, he may require the items so omitted to be disclosed to him under oath of the taxpayer, and to be added to or deducted from the original return. Such

supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this article. The Commissioner may proceed under the provisions of § 105-241.1, whether or not he requires a return or a supplementary return under this section. (1939, c. 158, s. 331; 1959, c. 1259, s. 8.)

Editor's Note. — The 1959 amendment substituted in the last sentence "105-241.1" for "105-159."

Collection and Enforcement of Income Tax.

§ 105-157. Time and place of payment of tax.—(a) Except as otherwise provided in this section and in article 4A and article 4B of this chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Commissioner of Revenue at the office where the return is filed at the time fixed by law for filing the return.

If the taxpayer is a corporation and the amount of the tax exceeds fifty dollars ($50.00), payment may be made in two equal installments: One half on the date the return is filed, and one half on or before the fifteenth day of the sixth month following the month in which the return was originally due to be filed, with interest on the deferred payment at the rate of six per cent (6%) per annum from the date the return was originally due to be filed. If the taxpayer is a corporation and the amount of the tax exceeds four hundred dollars ($400.00), payment may be made in four equal installments: One fourth at the time of filing the return, one fourth on or before the fifteenth day of the third month following the month in which the return was originally due to be filed, one fourth on or before the fifteenth day of the sixth month following the month in which the return was originally due to be filed, and one fourth on or before the fifteenth day of the ninth month following the month in which the return was originally due to be filed, with interest on deferred payments at the rate of six per cent (6%) per annum from the date the return was originally due to be filed.

In the event any deferred payment is not made when due, then the entire balance of the tax will immediately become due and collectible, and interest upon such outstanding balance shall be added at the rate of six per cent (6%) per annum from the date the return was originally due to be filed until paid.

(b) The tax may be paid with uncertified check during such time and under such regulations as the Commissioner of Revenue shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered. (1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1959 amendment, effective as of Jan. 1, 1960, rewrote the first paragraph of subsection (a).

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, deleted the former proviso at the end of the first paragraph of subsection (a), relating to the unavailability of the deferred payment option for income years beginning on and after Jan. 1, 1960; deleted the former second paragraph of subsection (a); rewrote the third, now second, paragraph of subsection (a); deleted former subsection (b); and redesignated former subsection (c) as present subsection (b).

§ 105-158: Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-159. Corrections and changes.—If the amount of the net income for any year of any taxpayer under this article, as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States of competent authority, such taxpayer, within two (2) years after receipt

of internal revenue agent's report or supplemental report reflecting the corrected or determined net income shall make return under oath or affirmation to the Commissioner of Revenue of such corrected, changed or determined net income. In making any assessment or refund under this section, the Commissioner shall consider all facts or evidence brought to his attention, whether or not the same were considered or taken into account in the federal assessment or correction. If the taxpayer fails to notify the Commissioner of Revenue of assessment of additional tax by the Commissioner of Internal Revenue, the statute of limitations shall not apply. The Commissioner of Revenue shall thereupon proceed to determine, from such evidence as he may have brought to his attention or shall otherwise acquire, the correct net income of such taxpayer for the fiscal or calendar year, and if there shall be any additional tax due from such taxpayer the same shall be assessed and collected; and if there shall have been an overpayment of the tax the said Commissioner shall, within thirty days after the final determination of the net income of such taxpayer, refund the amount of such excess: Provided, that any taxpayer who fails to comply with this section as to making report of such change as made by the federal government within the time specified shall be subject to all penalties as provided in § 105-236, in case of additional tax due, and shall forfeit his rights to any refund due by reason of such change.

If a refund of taxes paid is made under this section, interest thereon at four per cent (4%) per annum computed from ninety (90) days after the overpayment was made shall be added to such refund. If an assessment is made under this section, interest thereon at six per cent (6%) per annum computed from the date set by the statute for the filing of the return shall be added.

When the taxpayer makes the return reflecting the corrected net income as required by this section, the Commissioner of Revenue shall make assessments or refunds based thereon within three (3) years from the date the return required by this section is filed and not thereafter. When the taxpayer does not make the return reflecting the corrected net income as required by this section but the Department of Revenue receives from the United States government or one of its agents a report reflecting such corrected net income, the Commissioner of Revenue shall make assessments for taxes due based on such corrected net income within five (5) years from the date the report from the United States government or its agent is actually received and not thereafter. (1939, c. 158, s. 334; 1947, c. 501, s. 4; 1949, c. 392, s. 3; 1957, c. 1340, s. 14; 1963, c. 1169, s. 2.)

Editor's Note.—

The 1963 amendment, effective as to income years beginning on and after Jan. 1, 1963, rewrote the first sentence of this section, inserted the present second sentence and substituted "§ 105-236" for "§ 105-161" near the end of the first paragraph.

Cited in American Bakeries Co. v. Johnson, 259 N. C. 419, 131 S. E. (2d) 1 (1963).

§ 105-161: Repealed by Session Laws 1959, c. 1259, s. 9.

Editor's Note.—Notwithstanding the repeal of this section, Session Laws 1959, c. 1259, s. 2 (c), purported to amend subsection (d) by inserting the words "article 4A or article 4B" before the word "shall" in line two, the amendment to be effective Jan. 1, 1960.

ARTICLE 4A.

Withholding of Income Taxes from Wages and Filing of Declarations of Estimated Income and Payment of Income Tax by Individuals.

§ 105-163.1. Definitions.—As used in this article,

(1) "Commissioner" means the Commissioner of Revenue.

(2) "Corporation" includes an association or a joint stock company.

(3) "Dependent" means a dependent with respect to whom a three-hundred-dollar ($300.00) income tax exemption is allowed under the provisions of article 4 of this chapter.

(4) The word "employee" means an individual, whether resident or nonresident in this State, who performs or performed any service in this State for wages or an individual domiciled in this State who performs or performed any service outside this State for wages. The word "employee", as used in this subdivision, is intended to include officers of corporations and elected public officials.

(5) The word "employer" means this State, or any political subdivision thereof, the United States, or any agency or instrumentality of any one or more of the foregoing, or a person, for whom an individual performs or performed any service as an employee; except that:

a. If the person, governmental unit, or agency thereof, for whom the individual performs or performed the service does not have control of the payment of the wages for such services, the term "employer" (except for the purposes of subdivision (6) of this section) means the person having control of the payment of such wages, and

b. In the case of a person paying wages on behalf of a nonresident person not engaged in trade or business within this State or on behalf of any governmental unit or agency thereof not located within this State, the term "employer" (except for purposes of subdivision (6) of this section) means such person.

(6) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid:

a. For agricultural labor where such remuneration is paid to workers employed on the farm for services rendered on the farm in the production, harvesting, and transportation of agricultural products to market for the farmer-employer; or

b. For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

c. For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars ($50.00) or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

1. On each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

2. Such individual was regularly employed (as determined under subparagraph 1 above) by such employer in the performance of such service during the preceding calendar quarter; or

d. For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

e. To, or on behalf of, an employee or his beneficiary—

1. From or to a trust described in § 401(a) of the Internal Revenue Code which is exempt from tax under § 501-

(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

2. Under or to an annuity plan which, at the time of such payment, meets the requirements of § 401(a) (3), (4), (5), and (6) of the Internal Revenue Code.

(7) The term "transient employer" means an "employer" who is not a resident of this State and who temporarily engages in any activity within the State for the production of income. Without intending to exclude others who may come within the foregoing definition, any nonresident "employer" engaging in any such activity within the State which, as of any date, cannot be reasonably expected to continue for a period of eighteen consecutive months shall be deemed to be temporarily engaged in such activity.

(8) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, estate or trust.

(9) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(10) "Individual" means a natural person.

(11) "Internal Revenue Code" means the United States Revenue Code of 1954, as amended.

(12) "Payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(13) "Person" means and includes an individual, a fiduciary, a partnership and a corporation.

(14) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner, "taxable year" means the period for which such return is made.

(15) The term "net taxable income" means that part of the income of an individual which, during the taxable year of the individual, is subject to payment of an income tax thereon under the provisions of article 4 of this chapter. (1959, c. 1259, s. 1.)

Editor's Note.—This article is effective as of Jan. 1, 1960.

Cited in Allen v. Currie, 254 N. C. 636, 119 S. E. (2d) 917 (1961).

§ 105-163.2. Withholding. — (a) Every employer making payment of wages on or after January 1, 1960, shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows:

Such amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of such employee under article 4 of this chapter after making allowance for the personal exemptions to which such employee would be entitled on the basis of his status during such payroll period and after making allowance for withholding purposes for a deduction from wages of ten per cent (10%) thereof, but not exceeding five hundred dollars ($500.00) per calendar year, and without making allowance for any other deductions.

(b) The Commissioner of Revenue shall cause to be prepared and shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of exemptions to which an employee may be entitled and taking into account the limited ten per cent (10%) deduction above referred to. Such tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability with respect to said year. The withholding of wages pursuant to and in accordance with such tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this article.

(c) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, excluding Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid.

(d) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, excluding Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(e) The Commissioner may, by regulations, authorize employers:

(1) To estimate the wages which will be paid to any employee in any quarter of the calendar year;

(2) To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and

(3) To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter if the payroll period of the employee was quarterly.

(f) The Commissioner is authorized in unusual circumstances wherein he finds that the use of the prescribed tables is impracticable or constitutes an unreasonable requirement of the employer to authorize such employer to use some other method of determining the amounts to be withheld under this article, provided the amounts withheld under such other method will reasonably approximate the indicated income tax liability of his employees. Further, the Commissioner may authorize an employer to use another method for determining the amounts to be withheld under the provisions of this article from the wages or salaries of groups of employees or individual employees if the circumstances are such that the use of the tables would produce substantially incorrect results. Any authorization of the use of a different method shall be subject to review and cancellation or alteration by the Commissioner every twelfth month, and the Commissioner may cancel such authorization or order an alteration of such method at any time upon a finding by him that such authorization is being abused or that such method is not resulting in the withholding of a sum reasonably approximating the indicated income tax liability of the employees, which finding may be made by the Commissioner with or without notice or a hearing and shall be conclusive except as hereinafter provided. The Commissioner shall notify

the employer in writing of his finding and order thereon, and such notice shall be deemed to have been received by the employer on the third day after having been deposited in the mail and the employer shall thereafter abide by such order. Any employer feeling aggrieved by such order may thereafter apply for a hearing thereon before the Commissioner, unless a hearing has been previously held, and upon such hearing the findings of the Commissioner shall be deemed conclusive.

(g) The Commissioner is authorized to provide by regulation, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree to such additional withholding. Such additional withholding shall for all purposes be treated as other withholding amounts required to be deducted and withheld under this article.

(h) The act of compliance with any of the provisions of this article by a nonresident employer shall not constitute an act in evidence of and shall not be deemed to be evidence that such nonresident is doing business in this State. (1959, c. 1259, s. 1.)

§ 105-163.3. Withholding in accordance with regulations. — The manner of withholding and the amount to be deducted and withheld under G. S. 105-163.2 shall be determined in accordance with tables, rules and regulations promulgated by the Commissioner. The withholding exemption allowed by such tables, rules and regulations shall, as nearly as possible, approximate the exemptions to which an employee would be entitled under G. S. 105-149. (1959, c. 1259, s. 1.)

§ 105-163.4. Basis of determination of remuneration being wages. —If any of the remuneration paid by an employer to an employee during any payroll period or during any miscellaneous period without reference to a payroll period constitutes actual reimbursement of the employee for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer, then such amounts as are paid to reimburse the employee for such expenses are not to be considered as wages and no amounts shall be deducted and withheld therefrom. (1959, c. 1259, s. 1.)

§ 105-163.5. Exemptions allowable; certificates. — (a) An employee receiving wages shall be entitled to the exemptions for which such employee qualifies under the provisions of article 4 of this chapter.

(b) Every employee shall, on or before January 1, 1960, or at the time of commencing employment, whichever is later, furnish his employer with a signed withholding exemption certificate informing the employer of the exemptions which the employee claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under G. S. 105-149; but, in the event that the employee fails to file the exemption certificate required herein, the employer, in computing amounts to be withheld from said employee's wages, shall allow the employee the exemption accorded a single person with no dependents.

(c) Withholding exemption certificates shall take effect as of the beginning of the first payroll period which ends on or after the date on which such certificate is furnished, or if payment of wages is made without regard to a payroll period, then such certificate shall take effect as of the beginning of the miscellaneous payroll period for which the first payment of wages is made on or after the date on which such certificate is furnished; provided, that certificates furnished before January 1, 1960, shall be deemed to have been furnished on that date.

(d) If, on any day during the calendar year, the amount of withholding exemptions to which the employee is entitled is less than the amount of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten days thereafter,

furnish the employer with a new withholding exemption certificate relating to the amount of withholding exemptions which the employee then claims, which shall in no event exceed the amount to which he is entitled on such day. If, on any day during the calendar year, the amount of withholding exemptions to which the employee is entitled is greater than the amount of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the amount of withholding exemptions which the employee then claims, which shall in no event exceed the amount to which he is entitled on such day.

(e) Withholding exemption certificates shall be in such form and contain such information as the Commissioner may prescribe, but, insofar as practicable, the Commissioner shall cause the form of such certificates to be substantially similar to federal exemption certificates. (1959, c. 1259, s. 1.)

§ 105-163.6. Payment of amounts withheld; personal liability for failure to withhold; limitation of recovery.—(a) Every employer required to deduct and withhold from an employee's wages under G. S. 105-163.2 shall, for the quarterly period beginning January 1, 1960, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period, make return and pay over to the Commissioner the amounts required to be withheld under G. S. 105-163.2. Such returns shall be in such form and contain such information as the Commissioner may prescribe.

(b) Notwithstanding any of the other provisions of this section, all transient employers shall make return and pay over to the Commissioner on a monthly basis the amounts required to be withheld under G. S. 105-163.2. Such returns and payments to the Commissioner by transient employers shall be made on or before the last day of the month following the month for which such amounts were deducted and withheld from the wages of his employees.

(c) Notwithstanding any of the other provisions of this section, all employers engaged in any business which is seasonal shall make return and pay over to the Commissioner on a monthly basis the amounts required to be withheld under G. S. 105-163.2. Such returns and payments to the Commissioner by employers engaged in such seasonal business shall be made on or before the last day of the month following the month for which such amounts were deducted and withheld from the wages of his employees.

(d) If the Commissioner, in any case, has reason to believe that the collection of moneys, required by this article to be withheld by the employer, is in jeopardy, he may require the employer to make such return and pay to the Commissioner such amounts required to be withheld at any time said Commissioner may designate therefor subsequent to the time when such amounts should have been deducted from wages and withheld.

(e) Every employer who fails to withhold or pay to the Commissioner any sums required by this article to be withheld and paid shall be personally and individually liable therefor to the Commissioner; and any sum or sums withheld in accordance with the provisions of G. S. 105-163.2 shall be deemed to be held in trust for the Commissioner. (1959, c. 1259, s. 1.)

§ 105-163.7. Statement to employees; information to Commissioner.—(a) Every employer required to deduct and withhold from an employee's wages under G. S. 105-163.2 shall furnish to each such employee in respect to the remuneration paid by such employer to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of remuneration is made, duplicate copies of a written statement showing the following:

(1) The name of such person;

(2) The name of the employee and his social security account number;

(3) The total amount of wages;

(4) The total amount deducted and withheld under G. S. 105-163.2.

(b) The written statement above referred to shall be furnished at such other times, shall contain such other information, and shall be in such form as the Commissioner may by regulations prescribe. Every employer shall file annual returns or reports setting forth such information as the Commissioner may require, and the Commissioner may require the filing of such additional copies of all written statements described above as he may deem necessary. On and after January 1, 1961, the annual returns or reports required to be made to the Commissioner under the provisions of this section shall be in lieu of such returns required under G. S. 105-154 as would furnish identical information. (1959, c. 1259, s. 1.)

§ **105-163.8. Liability of employer.**—An employer shall be liable for the payment to the Commissioner of the amounts required to be deducted and withheld under G. S. 105-163.2, and an employer who has withheld and paid such amounts to the Commissioner shall not otherwise be liable to any person for the amounts of any such payments. Upon failure of an employer to pay over any amounts withheld or required to be withheld by said employer under this article, the Commissioner may make assessments, issue warrants for the collection of such amounts, issue certificates of tax liability, collect by attachment or garnishment proceedings, or bring actions for the collection of such amounts and for penalties due under the provisions of G. S. 105-241.1, G. S. 105-242 and G. S. 105-243. (1959, c. 1259, s. 1.)

§ **105-163.9. Refund to employer; application.**—(a) Where there has been an overpayment to the Commissioner by the employer or withholding agent under the provisions of this article, refund shall be made to the employer or withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent from the employee's wages, and such refund shall be paid together with interest thereon at the rate of four per cent (4%) per annum; provided, that interest on any such refund shall be computed from a date ninety (90) days after the date the overpayment was originally made by the employer or withholding agent.

(b) Unless written application for refund is received by the Commissioner from the employer within two years from the date the overpayment was made, no refund shall be allowed. (1959, c. 1259, s. 1.)

§ **105-163.10. Withheld amounts credited to individual for calendar year.**—The amount deducted and withheld under G. S. 105-163.2 during any calendar year from the wages of any individual shall be allowed as a credit to such individual against the tax imposed by G. S. 105-133, for taxable years beginning in such calendar year. If more than one taxable year begins in such calendar year such amount shall be allowed as a credit against the tax for the last taxable year so beginning. As a prerequisite to obtaining the credit allowed herein, the individual taxpayer must file with the Commissioner one copy, and such other copies and information as may be required by regulation, of the withholding statement provided for by G. S. 105-163.7, and such withholding statement must accompany the annual income tax return required by G. S. 105-152. (1959, c. 1259, s. 1.)

§ **105-163.11. Estimated declaration of income and income tax; contents; when and where filed; amendments to declaration; option of amendment.**—(a) Every individual shall, for all taxable years beginning on and after January 1, 1960, and at the times prescribed in subsection (c) of this section, make a declaration of his estimated income and his estimated income tax for the taxable year:

(1) If no part of his income consists of wages, and his net taxable income can reasonably be expected to equal or exceed two hundred dollars ($200.00) for the taxable year, or

(2) If his income consists of wages and other income, and his net taxable income can reasonably be expected to equal or exceed two hundred dollars ($200.00) for the taxable year; provided, that no individual shall be required to file a declaration pursuant to this paragraph unless all of his income from whatever source, other than wages from which tax has been withheld under the provisions of this article, which may be subject to an income tax under article 4 of this chapter can be reasonably expected to exceed, by two hundred dollars ($200.00) or more, the sum of:

a. All business-connected deductions allowable under the provisions of article 4 to which the taxpayer can be reasonably expected to be entitled during the taxable year in the production of all income, other than wages earned by the taxpayer, and

b. The amount of all deductible dividends from stocks which can be reasonably expected to be earned by the taxpayer during the taxable year.

(b) In the declaration required under subsection (a) above, the individual shall state:

(1) The amount which he estimates as his total income from all sources for the taxable year;

(2) The amount which he estimates as the amount of tax for which he will be liable under G. S. 105-133 for the taxable year, less any credits to which he can reasonably be expected to be entitled under G. S. 105-151;

(3) The amount which he estimates will be withheld, if any, from wages of the taxpayer for the taxable year under the provisions of G. S. 105-163.2;

(4) The excess of the amount estimated under subdivision (2) of this subsection over the amount estimated under subdivision (3) of this subsection, which excess for the purposes of this article shall be considered the estimated tax for the taxable year to be paid to the Commissioner directly by the individual; and

(5) Such other information as may be required by the Commissioner.

(c) The declaration required under subsection (a) of this section shall be filed with the Commissioner on or before April 15 of the taxable year, except that if the requirements of subsection (a) of this section are first met:

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year; or

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year; or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(d) An individual may make amendments of a declaration filed during the taxable year under regulations prescribed by the Commissioner.

(e) If on or before January 31 (or February 15, in the case of an individual referred to in subsection (f) below, relating to income from farming and commercial fishing) of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then—

(1) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

(2) If the tax shown on the return (reduced by the sum of all credits against tax to which the taxpayer may be entitled under the provisions of article 4 and article 4A of this chapter) is greater than the estimated tax shown in a declaration previously made, or in the last amendment

thereof, such return shall be considered as the amendment of the declaration permitted by subsection (d) to be filed on or before January 15.

In the application of this subsection in the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the 15th or last day of the months specified in this subsection, the 15th or last day of the months which correspond thereto.

(f) Declaration of estimated tax required to be filed by this section from individuals whose estimated gross income from farming and commercial fishing (including oyster farming) for the taxable year is at least two thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (c), be filed at any time on or before January 15 of the succeeding taxable year.

(g) The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner.

(h) In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto. (1959, c. 1259, s. 1; 1963, c. 785, ss. 1, 2.)

Editor's Note. — The 1963 amendment inserted "and commercial fishing" in the parenthetical clause in the introductory paragraph of subsection (e) and preceding the parenthetical clause in subsection (f).

§ 105-163.12. Filing of declarations and amended declarations hereunder.—If the taxpayer is unable to make his own declarations, amended declarations, payments or any information returns required under the provisions of this article, then the same shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer. (1959, c. 1259, s. 1.)

§ 105-163.13. Affirmation; penalty for false declaration. — Whenever any declaration, amended declaration, or information returns required under the provisions of this article shall be furnished to the Commissioner, there shall be annexed thereto the affirmation of the taxpayer, or of any other person furnishing same, in the following form: "I hereby affirm that this declaration, amended declaration, or return, including any schedules and attachments thereto, has been examined by me, and, to the best of my knowledge and belief, is true and complete and is made in good faith covering the taxable period stated, pursuant to the Revenue Act of 1939, as amended, and the regulations issued under authority thereof, and that this affirmation is made under the penalties prescribed by law." Any individual who wilfully makes and subscribes a declaration, amended declaration, or return required by this article, which he does not believe to be true and correct as to every material matter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine not to exceed one thousand dollars ($1,000.00) or imprisonment not to exceed six months, or both, in the discretion of the court. The Commissioner shall cause to be prepared blank forms for the said declarations, amended declarations and returns, and shall cause them to be distributed throughout the State, and to be furnished upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any declaration, amended declaration or return herein required. (1959, c. 1259, s. 1.)

§ 105-163.14. Payment of tax.—(a) The estimated income tax, as defined in G. S. 105-163.11 and with respect to which a declaration is required to be filed thereunder, shall be paid as follows:

(1) If the declarations is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the

second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year and is not required by subsection (c) of G. S. 105-163.11 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year and is not required by subsection (c) of G. S. 105-163.11 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(4) If the declaration is filed after September 15 of the taxable year, and is not required by subsection (c) of G. S. 105-163.11 to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in G. S. 105-163.11, there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subsection (c) of G. S. 105-163.11, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed on time.

(b) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased as the case may be, to reflect the respective increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(d) Payment of estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by article 4 of this chapter for the taxable year.

(e) The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner.

(f) In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto. (1959, c. 1259, s. 1.)

§ 105-163.15. Failure by individual to pay estimated income tax; penalty.—(a) In the case of any underpayment of the estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax imposed under article 4 for the taxable year an amount determined at the rate of six per cent (6%) per annum upon the amount of the underpayment as determined under subsection (b), for the period of the underpayment, as determined under subsection (c) of this section.

(b) For the purposes of subsection (a), the amount of the underpayment shall be the excess of:

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to seventy per cent (70%) (sixty-six and two-thirds per cent (66⅔%) in the case of individuals referred to in G. S. 105-163.11 (f), relating to income from farming and commercial

fishing) of the tax shown on the return for the taxable year or, if no return was filed, seventy per cent (70%) (sixty-six and two-thirds per cent (66⅔%) in the case of individuals referred to in G. S. 105-163.11 (f), relating to income from farming) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The 15th day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for such installment date.

(d) Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

a. The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months, or

b. An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under article 4 of the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

c. An amount equal to seventy per cent (70%) (sixty-six and two-thirds per cent (66⅔%) in the case of individuals referred to in G. S. 105-163.11 (f), relating to income from farming and commercial fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable income shall be placed on an annualized basis by:

1. Multiplying by 12 (or, in case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid.

2. Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

3. Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to ninety per cent (90%) of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) For purposes of applying this section—

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under G. S. 105-163.10 (relating to tax withheld at source on wages), and

(2) The amount of the credit allowed under G. S. 105-163.10 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (as determined under G. S. 105-163.14) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(f) The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner.

(g) Except as otherwise provided in this article, all provisions of articles 4 and 9 of this chapter relating to penalties for failure to file returns or pay taxes when due under said articles shall apply with respect to returns, declarations, and payments of tax by any individual, or failure to file returns or other records or make payment of withholding taxes or sums withheld from wages by any employer, pursuant to the provisions of this article. The penalties provided by articles 4 and 9 shall apply with respect to delinquencies for periods of time not specifically provided for in this article. (1959, c. 1259, s. 1; 1963, c. 785, ss. 3, 4.)

Editor's Note. — The 1963 amendment inserted "and commercial fishing" in the first parenthetical clause of subdivision (1) of subsection (b) and in the first sentence of paragraph c of subsection (d), subdivision (1).

§ 105-163.16. Overpayment refunded.—

(a) Where the amount of wages withheld at the source under G. S. 105-163.2 exceeds the taxes imposed by article 4 of this chapter against which the tax so withheld may be credited under G. S. 105-163.10, the amount of such excess shall be considered an overpayment by the employee, and, notwithstanding the provisions of G. S. 105-266 and G. S. 105-266.1, overpayment by the employee shall be refunded by the Commissioner under the provisions of this section.

(b) Where the amount of estimated tax paid under the provisions of G. S. 105-163.14 exceeds the taxes imposed by article 4 of this chapter against which the estimated tax so paid may be credited under the provisions of this article, the amount of such excess shall be considered an overpayment by the taxpayer, and, notwithstanding the provisions of G. S. 105-266 and G. S. 105-266.1, such overpayment by the taxpayer shall be refunded by the Commissioner under the provisions of this section.

(c) Where there has been an overpayment (as specified in subsections (a) and (b) of this section) of any tax imposed under article 4 of this chapter, as disclosed by the taxpayer's annual return required to be filed by article 4, the amount of such overpayment shall be refunded to the taxpayer; except that overpayments of fifty cents (50¢) or less shall be refunded only upon receipt by the Commissioner of a written demand for such refund from the taxpayer. Every refund authorized by this section shall be made as expeditiously as possible, and within six months from the date on which the annual return is filed or due to be filed, whichever is later, insofar as the same is practicable; except that no refunds for overpayment of estimated tax shall be made by the Commissioner prior to the date on which the final return is filed by the taxpayer. No interest shall be paid with respect to any such refund if the refund is made within the

six months' period above referred to. Interest computed at the rate of four per cent (4%) per annum shall be paid on refunds made after the expiration of said six months' period, such interest to be computed from the time of the expiration of said six months' period until paid. It shall not be necessary for the Attorney General or any member of his staff to approve such refund. The making of such refund does not absolve any taxpayer of any income tax liability which may in fact exist and the Commissioner may make any assessment for any deficiency in the manner provided in article 4 of this chapter. No overpayment of tax by the taxpayer shall be refunded irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three (3) years from the date set by the statute for the filing of the annual return by the taxpayer or within six (6) months of the payment of the tax alleged to be an overpayment, whichever date is the later. (1959, c. 1259, s. 1.)

§ **105-163.17. Enforcement.** — Except as otherwise provided in this article, all provisions of articles 4 and 9 of this chapter relating to assessments, interest on delinquent payments, liens and collections with respect to taxes shall apply to all taxes and to the withholding of proper amounts from employees' wages for which an employer is responsible pursuant to this article, and the procedure with respect thereto shall be the same as provided in said articles 4 and 9 with respect to assessment and collection of taxes.

Any employer required under the provisions of this article to deduct and withhold from wages and make returns and payment of amounts withheld to the Commissioner, who fails to withhold such amounts, or to make such returns, or who fails to remit amounts collected to the Commissioner, or otherwise fails to remit to the Commissioner as required by this article, shall be subject to a penalty equal to twenty-five per cent (25%) of the amount that should have been properly withheld and paid over to the Commissioner for each such failure. Such penalty shall be assessed and collected by the Commissioner in the same manner as is provided with respect to penalties on delinquent income tax payments under the provisions of articles 4 and 9 of this chapter.

The withholding of the proper amounts of an employee's wages pursuant to this article and the payment of proper amounts to the Commissioner as herein required, whether withheld in fact or not, shall be subject to all the provisions of articles 4 and 9 of this chapter relating to payment of income taxes, not inconsistent with this article. (1959, c. 1259, s. 1.)

§ **105-163.18. Rules and regulations.** — The Commissioner is hereby authorized to prescribe forms and make all rules and regulations which he deems necessary in order to achieve effective and efficient enforcement of this article. (1959, c. 1259, s. 1.)

§ **105-163.19. Wilful failure to collect or pay over tax.**—Any person required under this article to deduct and withhold, account for, make returns and pay over any tax imposed by article 4 and required to be withheld from wages and paid over under the provisions of this article who wilfully fails to withhold, collect and truthfully account for, make returns and pay over such tax shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months, or both, in the discretion of the court. (1959, c. 1259, s. 1.)

§ **105-163.20. Wilful failure to file declaration, amended declaration or pay estimated tax.**—Any person required under this article to file any declaration, amended declaration, or to pay estimated tax, or required by the provisions of this article or regulations made under the authority thereof to make any return or furnish any information, who wilfully fails to file such

declarations, amended declarations and such other returns as may be required, or who wilfully fails to pay any estimated tax, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months, or both, in the discretion of the court. (1959, c. 1259, s. 1.)

§ 105-163.21. Penalty for making false statement. — Any person who knowingly falsifies any statement, certificate or return required under this article or under any rule or regulation promulgated by the Commissioner of Revenue under authority of this article shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months, or both, in the discretion of the court. (1959, c. 1259, s. 1.)

§ 105-163.22. Reciprocity.—The Commissioner of Revenue may, with the approval of the Attorney General, enter into agreements with the taxing authorities of states having income tax withholding statutes with such agreements to govern the amounts to be withheld from the wages and salaries of residents of such other state or states under the provisions of this article when such other state or states grant similar treatment to the residents of this State. Such agreements may provide for recognition of the anticipated tax credits allowed under the provisions of G. S. 105-151 in determining the amounts to be withheld. (1959, c. 1259, s. 1.)

§ 105-163.23. Withholding from federal employees.—The Commissioner of Revenue is hereby designated as the proper official to make request for and enter into agreements with the Secretary of the Treasury of the United States to provide for the compliance with this article by the head of each department or agency of the United States in withholding of State income taxes from wages of federal employees and paying the same to this State. The Commissioner is hereby authorized, empowered and directed to make request for and enter into such agreements. (1959, c. 1259, s. 1.)

§ 105-163.24. Construction of article.—This article shall be liberally construed in pari materia with article 4 of this chapter to the end that taxes levied by article 4 shall be collected with respect to wages by withholding from wages by employers of the appropriate amounts herein provided for and by payments in installments by individuals of income tax with respect to income other than wages. (1959, c. 1259, s. 1.)

Article 4B.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

§ 105-163.25. Definitions.—As used in this article,

(1) "Commissioner" means the Commissioner of Revenue.

(2) "Corporation" includes joint-stock companies or associations.

(3) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(4) The words "taxable year" mean the calendar year or fiscal year upon the basis of which the net income is computed under article 4; if no fiscal year has been established, they mean the calendar year. In the case of a return made for a fractional part of the year under the provisions of article 4, or under regulations prescribed by the Com-

missioner, the words "taxable year" mean the period for which such return is made.

(5) The term "estimated tax" means the excess of the amount which the corporation estimates as the amount of the income tax imposed by article 4 over the sum of one hundred thousand dollars ($100,000). (1959, c. 1259, s. 1A.)

Editor's Note.—This article is effective as of July 1, 1959.

§ 105-163.26. Declarations of estimated income tax by corporations.—(a) Every corporation subject to taxation under article 4 shall, for all taxable years beginning on and after January 1, 1960, and at the times prescribed in G. S. 105-163.27, make a declaration of estimated tax under article 4 for the taxable year if its income tax imposed by article 4 for such taxable year reduced by the credits against the tax provided by article 4 can reasonably be expected to exceed one hundred thousand dollars ($100,000).

(b) The declaration shall contain a statement of the amount which the corporation estimates as its total net income from all sources for the taxable year, the proportion of its total net income allocable to North Carolina, the amount which it estimates as the amount of tax for which it will be liable for the taxable year, and such other information as may be required by the Commissioner.

(c) A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the Commissioner.

(d) The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner. (1959, c. 1259, s. 1A.)

§ 105-163.27. Time for filing declarations of estimated income tax by corporations. — (a) The declaration of estimated tax required of corporations by G. S. 105-163.26 shall be filed on or before the 15th day of the 9th month of the taxable year, except that if the requirements of G. S. 105-163.26 are first met after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the declaration shall be filed on or before the 15th day of the 12th month of the taxable year.

(b) If a declaration is filed before the 15th day of the 12th month of the taxable year, an amendment of such declaration may be filed on or before such day.

(c) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Commissioner. (1959, c. 1259, s. 1A.)

§ 105-163.28. Installment payments of estimated income tax by corporations.—(a) Notwithstanding the provisions of article 4, fifty per cent (50%) of the estimated tax, with respect to which a declaration is required under the provisions of this article, shall be paid to the Commissioner during the taxable year in accordance with the provisions of this section.

(b) If the declaration is filed on or before the 15th day of the 9th month of the taxable year, the amount determined under subsection (a) above shall be paid in two equal installments. The first installment shall be paid on or before the 15th day of the 9th month of the taxable year, and the second installment shall be paid on or before the 15th day of the 12th month of the taxable year. If the declaration is filed after the 15th day of the 9th month of the taxable year, the amount determined under subsection (a) above shall be paid in full on or before the 15th day of the 12th month of the taxable year.

(c) If any amendment of a declaration is filed, installments payable on the 15th day of the 12th month, if any, shall be ratably increased or decreased, as

the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment.

(d) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Commissioner.

(e) At the election of the corporation, any installment of the estimated tax may be paid prior to the date prescribed for its payment. (1959, c. 1259, s. 1A.)

§ 105-163.29. Payments of estimated income tax.—Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by article 4 for the taxable year. (1959, c. 1259, s. 1A.)

§ 105-163.30. Failure by corporation to pay estimated income tax.—(a) In the case of any underpayment of estimated tax by a corporation, except as provided in subsection (d), there shall be added to the tax under article 4 for the taxable year an amount determined at the rate of six per cent (6%) per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) For the purposes of subsection (a), the amount of the underpayment shall be the excess of

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to seventy per cent (70%) of the tax shown on the return for the taxable year or, if no return was filed, seventy per cent (70%) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last day prescribed for payment.

(c) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the 3rd month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on the 15th day of the 12th month shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for the 15th day of the 12th month.

(d) Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser—

(1) The tax shown on the return of the corporation for the preceding taxable year reduced by one hundred thousand dollars ($100,000), if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

(3)

a. An amount equal to seventy per cent (70%) of the tax for the taxable year computed by placing on an annualized basis the taxable income:

1. For the first 6 months or for the first 8 months of the taxable year, in the case of the installment required to be paid in the ninth month, and

2. For the first 9 months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the twelfth month.

b. For purposes of this paragraph, the taxable income shall be placed on an annualized basis by—

1. Multiplying by 12 the taxable income referred to in subparagraph a, and
2. Dividing the resulting amount by the number of months in the taxable year (6 or 8, or 9 or 11, as the case may be) referred to in subparagraph a.

(e) For purposes of subsections (b), (d) (2), and (d) (3), the term "tax" means the excess of the tax imposed by article 4, over the sum of one hundred thousand dollars ($100,000).

(f) The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner. (1959, c. 1259, s. 1A.)

§ **105-163.31. Filing of declarations and other returns hereunder.** —The declarations, amended declarations or any information returns required under the provisions of this article from any corporation shall be signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary. In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make and sign the declarations, amended declarations or any information returns for such corporation in the same manner and form as corporations are required to make same. (1959, c. 1259, s. 1A.)

§ **105-163.32. Affirmation; penalties for false declaration.**—Whenever any declaration, amended declaration or information returns required under the provisions of this article shall be furnished to the Commissioner, there shall be annexed thereto the affirmation of the person furnishing same, in the following form: "I hereby affirm that this declaration, amended declaration, or return, including any schedules and attachments thereto, has been examined by me, and, to the best of my knowledge and belief, is true and complete and is made in good faith covering the taxable period stated, pursuant to the Revenue Act of 1939, as amended, and the regulations issued under authority thereof, and that this affirmation is made under the penalties prescribed by law." Any individual who wilfully makes and subscribes a declaration, amended declaration, or return required by this article, which he does not believe to be true and correct as to every material matter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine not to exceed one thousand dollars ($1,000.00) or imprisonment not to exceed six months, or both, in the discretion of the court. The Commissioner shall cause to be prepared blank forms for the said declarations, amended declarations and returns, and shall cause them to be distributed throughout the State, and to be furnished upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any declaration, amended declaration or return herein required. (1959, c. 1259, s. 1A.)

§ **105-163.33. Overpayment refunded.** — Where there has been an overpayment of estimated tax, such overpayment shall be credited to the taxpayer and applied to the tax imposed upon such taxpayer by article 4. No refunds for overpayment of estimated tax shall be made by the Commissioner prior to the filing of the annual return required from the taxpayer under article 4,

but, after the annual return is filed, any overpayments shall be refunded in accordance with the provisions of article 4. (1959, c. 1259, s. 1A.)

§ 105-163.34. Enforcement. — Except as otherwise provided in this article, all provisions of articles 4 and 9 of chapter 105 of the General Statutes relating to assessments, liens and collections with respect to taxes shall apply to all payments for which a corporation is responsible under the provisions of this article, and the procedure with respect thereto shall be the same as provided in articles 4 and 9. (1959, c. 1259, s. 1A.)

§ 105-163.35. Wilful failure to pay estimated tax.—Any person required under this article to pay any estimated tax, who wilfully fails to pay such estimated tax, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) or imprisoned not exceeding six months, or punished by both such fine and imprisonment in the discretion of the court, within the limitations aforesaid. (1959, c. 1259, s. 1A.)

§ 105-163.36. Construction of article.—This article shall be liberally construed in pari materia with article 4 to the end that taxes levied by article 4 shall be collected in installments during the taxable year in the manner and to the extent provided for by this article. (1959, c. 1259, s. 1A.)

§ 105-163.37. Rules and regulations. — The Commissioner is hereby authorized to prescribe forms and to make all rules and regulations which he deems necessary to achieve effective and efficient enforcement of this article. (1959, c. 1259, s. 1A.)

Article 5.

Schedule E. Sales and Use Tax.

Division I. Title, Purpose and Definitions.

§ 105-164.1. Short title.

Editor's Note.—

For case law survey on sales tax, see 41 N. C. Law Rev. 508.

Power of Legislature. — The power of the legislature to levy taxes of the character provided in this article has long been settled. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Sales Tax Is a Privilege or License Tax.—The legislature intended that the sales tax be primarily a privilege or license tax on retailers. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

The sales tax statute levies a tax upon the sale of tangible personal property in this State by a "retail" merchant as a privilege tax for engaging or continuing in the business of a retail merchant. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Imposed on All Retailers, as a Class.—The North Carolina law imposes the sales tax on all retailers, as a class, and applies it alike in its exactions and exemptions to all persons belonging to the prescribed class. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Perfect equality in the collection of the tax by retailers from consumers is, as a practical matter, impossible as between almost any two or more retailers by reason of the differences in types of merchandise sold and selling methods. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

§ 105-164.2. Purpose.

Quoted in Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

§ 105-164.3. Definitions.

(10) "Nonresident retail or wholesale merchant" shall mean every person whose business establishment is located outside North Carolina and who engages in the business of buying or acquiring by consignment or otherwise any tangible personal property and selling the same at retail or wholesale and who has applied for and obtained from the Commissioner a certificate of registration in accordance with such rules and regulations as may be prescribed for the issuance thereof.

(15) "Sale" or "selling" shall mean any transfer of title or possession, or both, exchange, barter, lease, or rental of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property or consumed at the place at which such property is prepared, served or sold. A transaction whereby the possession of the property is transferred but the seller retains title or security for the payment of the price shall be deemed a sale.

(17) "Storage" means and includes any keeping or retention in this State for any purpose except sale in the regular course of business of tangible personal property purchased from a retailer.

(19) "Storage" and "Use"; Exclusion.—"Storage" and "use" do not include the keeping, retaining or exercising any right or power over tangible personal property for the original purpose of subsequently transporting it outside the State for use thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used solely outside the State.

(23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturer or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant".

(24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1.)

Editor's Note. — The 1959 amendment made changes in subdivisions (10), (15), (17), (19), (23) and (24).

The 1961 amendment, effective July 1, 1961, changed the second sentence of subdivision (23) and deleted the former second sentence of subdivision (24).

Only the subdivisions mentioned are set out.

Division II. Taxes Levied.

Part 1. Retail Sales Tax.

§ 105-164.4. Imposition of tax; retailer.—There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person who engages in the business of selling tangible personal property at retail, renting or furnishing tangible personal property or the renting and furnishing of rooms, lodgings and accommodations to transients, in this State, the same to be collected and the amount to be determined by the application of the following rates against gross sales and rentals, to wit:

(1) At the rate of three per cent (3%) of the sales price of each item or article of tangible personal property when sold at retail in this State, the tax to be computed on total net taxable sales as defined herein but for the purpose of computing the amount due the State each and every taxable retail sale, or retail sales upon which the tax has been collected, or the amount of tax actually collected, whichever be greater and whether or not erroneously collected, shall be included in the computation tax due the State. Provided, however, that in the case of the sale of any airplane, railway locomotive, railway car or the sale of any motor vehicle, the tax shall be only at the rate of one per cent (1%) of the sales price, and on all such sales on and after July 1, 1962, the tax shall be at the rate of one and one-half per cent (1½%) of the sales price, but at no time shall the maximum tax with respect to any one such airplane, railway locomotive, railway car or motor vehicle, including all accessories attached thereto at the time of delivery thereof to the purchaser, be in excess of one hundred twenty dollars ($120.00).

For the purposes of this section, the words "motor vehicle" mean any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery, or equipment, special mobile equipment as defined in G. S. 20-38, nor any vehicle designed primarily for use in work off the highway. For the purposes of this subdivision, the sale separately of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether by the same retailer or different retailers, shall be subject only to the tax herein prescribed with respect to a single motor vehicle.

Provided further, in addition to all other taxes, there is hereby levied and imposed upon every person for the privilege of using the streets and highways of this State, a tax at the rate of one per cent (1%) of the sales or purchase price of any motor vehicle, new chassis and/or new body as defined, described and limited in this section, including all accessories attached thereto at the time of delivery thereof to the purchaser, purchased or acquired for use on the streets and highways of this State, and on and after July 1, 1962, at the rate of one and one-half per cent (1½%) of the sales or purchase price, but at no time shall said tax exceed one hundred twenty dollars ($120.00) with respect to any one motor vehicle, and the same shall be paid to the Commissioner of Revenue at the time of applying for certificates of title or registration of such motor vehicle. No certificate of title or registration plate shall be issued for same unless and until said tax has been paid: Provided, however, if such person so

applying for certificate of title or registration and license plate for such motor vehicle shall furnish to the Commissioner of Revenue a certificate from a motor vehicle dealer licensed to do business in this State, upon a form furnished by the Commissioner, certifying that such person has paid the tax thereon levied in this article, the tax herein levied shall be remitted to such person to avoid in effect double taxation on said motor vehicle under this article. It is not the intention of this section to impose any tax upon a body mounted upon the chassis of a motor vehicle which temporarily enters the State for the purpose of having such body mounted thereon by the manufacturer thereof.

The tax levied under this subdivision shall not apply to the owner of a motor vehicle who purchases or acquires said motor vehicle from some person, firm or corporation who or which is not a dealer in new and/or used motor vehicles if the tax levied under this article has been paid with respect to said motor vehicle.

Provided further, the tax shall be only at the rate of one per cent (1%) of the sales price on the following items:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuels to farmers to be used by them for any farm purposes other than preparing food, heating dwellings and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one per cent (1%) rate of tax imposed herein.

d. Sales of fuel to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one per cent (1%) rate of tax imposed herein.

e. Sales of fuel to commercial laundries or to pressing and dry cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

Provided further, the tax shall be only at the rate of one per cent (1%) of the sales price, subject to a maximum tax of eighty dollars ($80.00) per article, on the following item:

g. Sales of machines and machinery, whether animal or motor drawn or operated, and parts and accessories for such machines and machinery to farmers for use by them in the planting, cultivating, harvesting or curing of farm crops, and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry, eggs or livestock.

The term "machines and machinery" as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand,

and shall not include any motor vehicles required to be registered under chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to hand-fired furnances or used in connection with mechanical burners.

h. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants.

i. Sales of central office equipment and switchboard and private branch exchange equipment to telephone and telegraph companies regularly engaged in providing telephone and telegraph service to subscribers on a commercial basis.

j. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

k. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

l. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

(2) At the rate of three per cent (3%) of the gross proceeds derived from the lease or rental of tangible personal property as defined herein, where the lease or rental of such property is an established business, or the same is incidental or germane to said business; except that whenever a rate of less than three per cent (3%) is applicable to a sale of property which is leased or rented, the lower rate of tax shall be due on such lease or rental proceeds.

(3) Operators of hotels, motels, tourist homes and tourist camps shall be considered "retailers" for the purposes of this article. There is hereby levied upon every person, firm or corporation engaged in the business of operating hotels, and every person, firm or corporation engaged in the business of operating tourist homes, tourist camps and similar places of business, a tax of three per cent (3%) of the gross receipts derived from the rental of any room or rooms, lodgings, or accommodations furnished to transients at any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms, lodgings or accommodations are regularly furnished to transients for a consideration. The tax shall not apply, however, to any room, lodging or accommodation supplied to the same person for a period of 90 continuous days or more. Every person subject to the provisions of this section shall register and secure a license in the manner provided in subdivision (7) of this section, and, insofar as practicable, all other provisions of this article shall also be applicable with respect to the tax herein provided for.

(4) Every person, firm or corporation engaged in the business of operating a pressing club, cleaning plant hat blocking establishment, dry cleaning plant, laundry (including wet or damp wash laundries and businesses known as launderettes and launderalls), or any similar type

business, or engaged in the business of renting clean linen or towels or wearing apparel, or any similar type business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or rental business for any of the aforenamed businesses, shall be considered "retailers" for the purposes of this article. There is hereby levied upon every such person, firm or corporation a tax of three per cent (3%) of the gross receipts derived from services rendered in engaging in any of the occupations or businesses named in this subdivision, and every person, firm or corporation subject to the provisions of this subdivision shall register and secure a license in the manner hereinafter provided in this section, and, insofar as practicable, all other provisions of this article shall be applicable with respect to the tax herein provided for. The taxes levied in this subdivision are additional privilege or license taxes for the privilege of engaging in the occupations or businesses named herein. Any person, firm or corporation engaged in cleaning, pressing, hat blocking, laundering for, or supplying clean linen or towels or wearing apparel to, another person, firm or corporation engaged in soliciting shall not be required to pay the three per cent (3%) tax on its gross receipts derived through such solicitor, if the soliciting person, firm or corporation has registered with the Department, secured the license hereinafter required and has paid the tax at the rate of three per cent (3%) of the total gross receipts derived from business solicited. Persons, firms and corporations required to be licensed under this article and to pay the taxes imposed by this subdivision shall not hereafter be subject to the one per cent (1%) of gross receipts taxes levied under G. S. 105-74 and 105-85, with respect to gross receipts collected on and after July 1, 1961.

(5) The said tax shall be collected from the retailer as defined herein and paid by him at the time and in the manner as hereinafter provided. Provided, however, that any person engaging or continuing in business as a retailer shall pay the tax required on the net taxable sales of such business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of tangible personal property in such form as may be accurately and conveniently checked by the Commissioner or his duly authorized agent. If such records are not kept separately the tax shall be paid as a retailer on the gross sales of business and the exemptions and exclusions provided by this article shall not be allowed.

(6) The tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes.

(7) Any person who shall engage or continue in any business for which a privilege tax is imposed by this article shall immediately after July 1, 1957, apply for and obtain from the Commissioner upon payment of the sum of one dollar ($1.00) a license to engage in and conduct such business upon the condition that such person shall pay the tax accruing to the State of North Carolina under the provisions of this article and he shall thereby be duly licensed and registered to engage in and conduct such business. The license tax levied in this section shall be a continuing license until revoked for failure to comply with the provisions of this article. Provided, however, that any person who has heretofore applied for and obtained such license and the same is in force and effect as of July 1, 1957, shall not be required to apply for and obtain a new license. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11.)

Editor's Note.— The 1959 amendment rewrote the first paragraph of subdivision (1). The 1961 amendment, effective July 1,

1961, rewrote the proviso at the end of the first paragraph of subdivision (1), deleted the part of the second paragraph formerly appearing after "vehicle" ending in line fourteen, rewrote the proviso constituting the first sentence of the third paragraph and added all of the subdivision beginning with the fifth paragraph. It renumbered former subdivisions (4), (5) and (6) as (5), (6) and (7), respectively, and inserted new subdivision (4).

The 1963 amendment, effective July 1, 1963, inserted the words "railway locomotive, railway car" twice in the second sentence of subdivision (1), substituted "regularly engaged in providing telephone and telegraph service to subscribers on a commercial basis" for "which are under the regulation and supervision of the North Carolina Utilities Commission" at the end of paragraph (i) of subdivision (1), and added the exception at the end of subdivision (2).

Effect of 1961 Amendatory Act. — Section 3 of Session Laws 1961, c. 826, provided that notwithstanding any express repeal contained in the act or any repeal implied from its terms and provisions, the existing revenue laws of the State should continue in full force and effect with respect to all acts and transactions occurring prior to July 1, 1961, affected or which ought to be affected by their terms and provisions, and with respect to all liabilities, criminal as well as civil, incurred or which ought to have been incurred with respect to said acts and transactions occurring prior to July 1, 1961.

Section 3 of the act also provided that it should not be applicable with respect to any building materials purchased for the purpose of fulfilling any lump sum or unit price contract entered into or awarded before July 1, 1961, or entered into or awarded pursuant to any bid made before July 1, 1961, and that with respect to any such building materials purchased, the provisions affected by the act should remain in full force and effect.

Same — Explanation. — The 1961 engrossed bill actually passed and not the bill as enrolled has been followed in two instances.

The enrolled bill failed to state that the comma after the word "vehicle" ending in line fourteen of the second paragraph of subdivision (1) should be changed to a period, and the remainder of the paragraph deleted. This codification treats this paragraph exactly as directed by the language of the engrossed bill actually passed but not properly enrolled.

The engrossed bill rewrote the proviso constituting the first sentence of the third paragraph of subdivision (1), but the enrolled bill omitted the language expressly so stating. This codification substitutes the new proviso for the old.

The expression "total net taxable sales" and expressions of similar purport, as used in this article, means the total of all retail sales, except those excluded in whole or in part by Part 1 of Division II, which imposes and levies the tax, and except those which are exempt under § 105-164.13. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Part 2. Wholesale Tax.

§ 105-164.5. Imposition of tax; wholesale merchant. — There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person who engages in the business of selling tangible personal property at wholesale in this State as defined herein, the same to be collected and the amount to be determined in the following manner, to wit:

(1) Every wholesale merchant as defined in this article shall apply for and obtain an annual license and pay tax therefor of ten dollars ($10.00). Such annual license shall be paid for in advance within the first fifteen days of July in each year or, in the case of a new business, within fifteen days after business is commenced. Manufacturers making wholesale sales, as defined in this article, of their own manufactured products, directly and exclusively from the place where such articles of tangible personal property are manufactured, shall not be required to obtain an annual wholesale license.

(2) The sale of any tangible personal property by any wholesale merchant to anyone other than to a registered retailer, wholesale merchant or nonresident retail or wholesale merchant as defined for resale shall

be taxable at the rate of tax provided in this article upon the retail sale of tangible personal property.

(3) The sale of any tangible personal property by any wholesale merchant to a nonresident retail or wholesale merchant must be in strict compliance with such regulations as may be promulgated by the Commissioner and which are applicable to such sales. Any sale which does not conform to such regulations shall be taxable at the rate of tax provided in this article upon the retail sale of tangible personal property.

(4) Every wholesale merchant who sells tangible personal property to retailers or nonresident retail or wholesale merchants for resale shall deliver to such customer a bill of sale for each sale of such tangible personal property whether sold for cash or on credit and shall make and retain a duplicate or carbon copy of each such bill of sale and shall keep on file all such duplicate bills of sale for at least three years from the date of sale. Failure to comply with the provisions of this subsection shall subject the wholesale merchant to liability for tax upon such sales at the rate of tax levied in this article upon retail sales.

(5) The tax levied is and shall be in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; c. 1213, s. 2.)

Editor's Note. — The 1959 amendment inserted the third sentence of subdivision (1), changed the fifth sentence thereof, and inserted the words "or wholesale" in line three of subdivision (2) and in the second line of subdivisions (3) and (4).

The first 1961 amendment, effective July 1, 1961, deleted portions of subdivision (1). However, this amendment was superseded by the second 1961 amendment, effective July 1, 1961, which deleted all of subdivision (1) after the word "license" in line nine.

§ 105-164.5a: Repealed by Session Laws 1961, c. 1213, s. 3, effective July 1, 1961.

Editor's Note.—The repealed section had been amended by Session Laws 1959, c. 1259, s. 5, and Session Laws 1961, c. 826, s. 2.

Part 3. Use Tax.

§ 105-164.6. Imposition of tax.

(1) At the rate of three per cent (3%) of the cost price of each item or article of tangible personal property when the same is not sold but used, consumed, distributed or stored for use or consumption in this State; except that, whenever a rate of less than three per cent (3%) is applicable under the sales tax schedule set out in G. S. 105-164.4 to the sale at retail of an item or article of tangible personal property, the same rate shall be used in computing any use tax due under this subdivision.

(2) At the rate of three per cent (3%) of the monthly lease or rental price paid by the lessee or rentee, or contracted or agreed to be paid by the lessee or rentee, to the owner of the tangible personal property; except that, whenever a rate of less than three per cent (3%) is applicable under the sales tax schedule set out in G. S. 105-164.4 to the sale at retail of an item or article of tangible personal property, then the same rate shall be used in computing any use tax due under this subdivision.

(5) Every person storing, using or otherwise consuming in this State tangible personal property purchased or received at retail either within or without this State shall be liable for the tax imposed by this arti-

cle and the liability shall not be extinguished until the tax has been paid to this State. Provided, however, that a receipt from a registered retailer engaged in business in this State given to the purchaser in accordance with the provisions of this article shall be prima facie sufficient to relieve the purchaser from liability for the tax to which such receipt may refer and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased said property.

(1959, c. 1259, s. 5; 1961, c. 826, s. 2.)

Cross Reference.—See note to § 105-164.4.

Editor's Note.—

The 1959 amendment deleted the former last sentence of subdivision (5).

The 1961 amendment, effective July 1, 1961, added the exception clauses to subdivisions (1) and (2).

Only the subdivisions mentioned are set out.

Applied in Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Cited in American Equitable Assurance Co. v. Gold, 249 N. C. 461, 106 S. E. (2d) 875 (1959).

Part 4. General Provisions.

§ 105-164.7. Sales tax part of purchase price.

This section does not relieve the retailer of any tax liability; it provides him a ready legal means for recoupment. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Failure to Charge or Collect Tax Does Not Affect Retailer's Liability.—The tax must be added to the purchase price and constitutes a debt from purchaser to retailer until paid, but failure to charge or collect the tax from purchaser shall not affect retailer's liability. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

The retailer is not to be excused from liability merely because it is to be his advantage to make use of a method of selling which will not permit him to keep a proper record of sales or to make the collections required by law. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Cited in American Equitable Assurance Co. v. Gold, 249 N. C. 461, 106 S. E. (2d) 875 (1959).

§ 105-164.9. Advertisement to absorb tax unlawful.

Stated in Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

§ 105-164.10. Retail bracket system.—For the convenience of the retailer in collecting the tax due at the rate of three per cent (3%) and to facilitate the administration of this article, every retailer engaged in or continuing within this State in a business for which a license, privilege or excise tax is required by this article shall add to the sale price and collect from the purchaser on all taxable retail sales an amount equal to the following:

(1) No amount on sales of less than 10¢.
(2) 1¢ on sales of 10¢ and over but not in excess of 35¢.
(3) 2¢ on sales of 36¢ and over but not in excess of 70¢.
(4) 3¢ on sales of 71¢ and over but not in excess of $1.16.
(5) Sales over $1.16—straight 3% with major fractions governing.

Use of the above bracket does not relieve the retailer from the duty and liability to remit to the Commissioner an amount equal to three per cent (3%) of the gross receipts derived from all taxable retail sales subject to the three per cent (3%) rate during the taxable period.

Whenever a sales or use tax is due at a rate of less than three per cent (3%), the tax shall be computed by multiplying the sales or purchase price by the applicable rate and by rounding the result off to the nearest whole cent. The use of this method in computing the sales or use tax shall not relieve a tax-

payer from the duty and liability of remitting to the Commissioner an amount equal to the applicable rates times gross receipts subject to taxation at the lesser rates. (1957, c. 1340, s. 5; 1961, c. 826, s. 2.)

Cross Reference.—See notes to § 105-164.4.

Editor's Note.—The 1961 amendment, effective July 1, 1961, inserted in line two the words and figures "due at the rate of three per cent (3%)." It also inserted the words and figures "subject to the three per cent (3%) rate" in the next to last paragraph, and added the last paragraph.

Constitutionality.—This section does not render the sales tax unconstitutional as violating the due process clause of the State Constitution or the Fourteenth Amendment of the federal Constitution. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

The seller of goods through vending machines was in no position to attack the sales tax statute as discriminatory in that no tax is collected on sales of less than 10¢, where approximately 76% of the seller's receipts came from items priced at 10¢ or above, and thus, assuming the average sale to be 20¢, the seller must have collected 5% on more than three fourths of its total receipts. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

The bracket system is for the convenience of the retailer. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

The 1957 act made no material change in the effect of the bracket system, which had previously been in force pursuant to a regulation of the Commissioner of Revenue, and made no change in the nature of the tax by reason of the inclusion of the bracket system in the act itself. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Retailer Not Relieved of Liability.—The legislature was careful to state, in all instances where administrative provisions might be construed to shift the burden of the tax from retailer to purchaser, that such provisions do not relieve the retailer from his privilege tax liability. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Goods Not Exempt Because of Smallness of Unit Price.—This article in no particular exempts goods from the tax on retailers because of smallness of unit price. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Section Has Reference to Sales, Not Unit Price of Goods.—The bracket system provides that a retailer shall collect from a purchaser "no amount on sales of less than 10¢," and it has reference to sales, not unit price of goods. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

If a customer buys two or more items priced at less than 10¢ each so that the sale amounts to 10¢ or more, the retailer's failure to collect said tax from the purchaser shall not affect the retailer's liability to the State. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

§ **105-164.11. Excessive and erroneous collections.**—When the tax collected for any period is in excess of the total amount which should have been collected, the total amount collected must be paid over to the Commissioner less the compensation to be allowed the retailer as hereinafter set forth. When tax is collected for any period on exempt or nontaxable sales the tax erroneously collected shall be remitted to the Commissioner and no refund thereof shall be made to a taxpayer unless the purchaser has received credit for or has been refunded the amount of tax erroneously charged. This provision shall be construed with other provisions of this article and given effect so as to result in the payment to the Commissioner of the total amount collected as tax if it is in excess of the amount which should have been collected. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2.)

Cross Reference.—See note to § 105-164.4.

Editor's Note. — The 1959 amendment rewrote this section.

The 1961 amendment, effective July 1, 1961, rewrote the caption and the first and last sentences.

§ **105-164.12. Freight or delivery transportation charges.**—Freight delivery, or other like transportation charges connected with the sale of tangible personal property are subject to the sales and use tax if title to the tangible

personal property being transported passes to the purchaser at the destination point. Where title to the tangible personal property being transported passes to the purchaser at the point of origin, the freight or other transportation charges are not subject to the sales tax. For the purposes of this section it is immaterial whether the retailer or purchaser actually pays for any charges made for transportation, whether the charges were actually paid by one for the other, or whether a credit or allowance is made or given for such charges. Nothing in this section shall operate to exclude from the use tax any freight delivery or other like transportation charges. Such charges shall be included as a portion of the cost price and subject to the use tax. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5.)

Editor's Note. — The 1959 amendment deleted the words "and use" between the words "sales" and "tax" in the seventh line.

Division III. Exemptions and Exclusions.

§ 105-164.13. Retail sales and use tax.—The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this article:

Agricultural Group.

(1) Commercial fertilizer on which the inspection tax is paid and lime and land plaster used for agricultural purposes whether the inspection tax is paid or not.

(2) Seeds, feeds for livestock and poultry, rodenticides, insecticides, herbicides, fungicides, pesticides for livestock, poultry and agriculture.

(3) Products of farms, forests, and mines when such sales are made by the producers in their original or unmanufactured state.

(4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.

(4.1) Baby chicks and poults sold for commercial poultry or egg production.

Industrial Group.

(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered wholesale or retail merchants, for the purpose of resale except as modified by Division I, § 105-164.3, subdivision (23). Provided, however, this exemption shall not extend to or include retail sales to users or consumers not for resale.

(6) Ice, whether sold by the manufacturer, producer, wholesale or retail merchant.

(7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producers. Fish and seafoods shall be likewise exempt when sold by the fishermen.

(8) Sales of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of tangible personal property which is manufactured.

(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories and supplies to commercial fishermen for use by them in the taking or catching commercially of shrimp, crab, oysters, clams, scallops, and fish, both edible and nonedible.

(10) Sales to commercial laundries or to pressing and dry cleaning establishments of articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

Motor Fuels Group.

(11) Gasoline or other motor fuel on which the tax levied in § 105-434 and/or § 105-435 of the General Statutes is due and has been paid, and the fact that a refund of the tax levied by either of said sections is made pursuant to the provisions of subchapter V of chapter 105 shall not make the sale or the seller of such fuels subject to the tax levied by this article.

Medical Group.

(12) Crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of physicians or optometrists and other orthopedic appliances when the same are designed to be worn on the person of the owner or user.

(13) Medicines sold on prescription of physicians and dentists.

Printed Materials Group.

(14) Holy Bibles; public school books on the adopted list, the selling price of which is fixed by State contract.

Transactions Group.

(15) Accounts of purchases, representing taxable sales, on which the tax imposed by this article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales, provided, however, they must be added to gross sales if afterwards collected.

(16) Sales of used articles taken in trade, or a series of trades, as a credit or part payment on the sale of a new article, provided the tax levied in this article is paid on the gross sales price of the new article. In the interpretation of this subsection, new article shall be taken to mean the original stock in trade of the merchant, and shall not be limited to newly manufactured articles. The resale of articles repossessed by the vendor shall likewise be exempt from gross sales taxable under this article.

Exempt Status Group.

(17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

Unclassified Group.

(18) Funeral expenses, including coffins and caskets, not to exceed one hundred and fifty dollars ($150.00). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the rate of three per cent (3%). Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services the provisions of this subsection shall apply to the total for both.

(19) Sales by concession stands operated by the State prison system within the confines of the prisons where such sales are made to prison inmates and guards therein while on duty.

(20) Sales by blind merchants operating under supervision of the Commission for the Blind.

(21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.

(22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.

(23) Sales of wrapping paper, labels, wrapping twine, paper, cloth, plastic

bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, includings paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail or when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

(24) Sales of fuel and other items of tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other items of tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.

(25) Sales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.

(26) Lunches to school children when such sales are made within school buildings and are not for profit.

(27) Meals and food products served to students in dining rooms regularly operated by State or private educational institutions or student organizations thereof.

(28) Sales of newspapers by newspaper street vendors and by newsboys making house to house deliveries. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9.)

Cross Reference.—See note to § 105-164.4.

Editor's Note.—

The first 1959 amendment added former subdivision (40), now subdivision (25). The second 1959 amendment inserted "or registered" in line two of former subdivision (9), now subdivision (5), made changes in former subdivision (17), now subdivision (10) and added former subdivision (39), now subdivision (24). It also amended former subdivisions (8), (24) and (30), which were subsequently deleted in 1961.

The first 1961 amendment, effective July 1, 1961, rewrote former subdivisions (17), (21) and (25), now subdivisions (10), (13) and (14), respectively. It deleted former subdivisions (5), (6), (7), (8), (11), (12), (15), (18), (22), (23), (24), (26), (30), (31) and (38) and renumbered all of the remaining subdivisions as (1) through (25), consecutively. It then added new subdivisions (26) and (27).

The second 1961 amendment, effective July 1, 1961, rewrote present subdivision (24), and the third 1961 amendment, effective July 1, 1961, added subdivision (28).

The 1963 amendment, effective July 1, 1963, made subdivision (2) applicable to rodenticides, herbicides, fungicides and pesticides; added subdivision (4.1); and rewrote subdivision (28).

The power to exempt from taxation, as well as the power to tax, is an essential attribute of sovereignty. Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

Exemption Is Never Presumed. — The general rule is that a grant of exemption from taxation is never presumed. Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

Statutes Strictly Construed. — Statutes providing exemption from taxation are strictly construed. Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

One who claims an exemption or exception from tax coverage has the burden of bringing himself within the exemption or exception. Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Insecticides.—This section does not define insecticides, so the term must be given its ordinary meaning. Olin Mathieson Chemical Corp. v. Johnson, 257 N. C. 666, 127 S. E. (2d) 262 (1962).

MH-30 is an agent for destroying weeds and plants—a herbicide. It is no more an insecticide than would be a forest fire which destroyed the balsam firs upon which the woolly aphids feed. Olin Mathieson Chemical Corp. v. Johnson, 257 N. C. 666, 127 S. E. (2d) 262 (1962).

The word "or" in subdivision (23) of this section must be taken conjunctively and construed as "and," and the manifest legislative intent of subdivision (23) is that the materials therein enumerated shall only be exempt from the sales tax "when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer." Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

Poultry Coops.—Where plaintiffs alleged that they "sell their coops to farmers, poultrymen, and persons, firms, and corporations engaged in the poultry business, and such coops are used for packaging, shipment, and delivery of tangible personal property which is sold either at wholesale or retail, or such coops are delivered with the chickens or turkeys to the customer," and defendant admitted "that the plaintiffs sell their coops to farmers, poultrymen and persons, firms and corporations engaged in the poultry business, and that such coops are used by such customers in the delivery of live poultry, which is sold by such customers at either wholesale or retail," such allegations in the complaint and admissions in the answer are not sufficient to exempt plaintiffs' sales of coops from the sales tax within the purview and intent of subdivision (23) of this section, since there was no allegation in the complaint to the effect that when plaintiffs' vendees sold poultry the coops constituted a part of the sale of such poultry and were delivered with the poultry to the customer. Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

Quoted in In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

§ 105-164.14. Certain refunds authorized.—(a) Any person engaged in transporting persons or property in interstate commerce for compensation who is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the Civil Aeronautic Board and who is required by either such Commission or Board to keep records according to its standard classification of accounting may secure a refund from the Commissioner of Revenue with respect to sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this State for motor vehicles, railroad cars, locomotives, and airplanes operated by such person, upon the conditions described below. The Commissioner of Revenue shall prescribe the periods of time, whether monthly, quarterly, semiannually or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following such periods, an application for refund may be made. An applicant for refund shall furnish such information as the Commissioner may require, including detailed information as to lubricants, repair parts and accessories wherever purchased, whether within or without the State, acquired during the period with respect to which a refund is sought, and the purchase price thereof, detailed information as to sales and use tax paid in this State thereon, and detailed information as to the number of miles such motor vehicles, railroad cars, locomotives, and airplanes were operated both within this State, and without this State, during such period, together with satisfactory proof thereof. The Commissioner shall thereupon compute the tax which would be due with respect to all lubricants, repair parts and accessories acquired during the refund period as though all such purchases were made in this State, but only on such proportion of the total purchase prices thereof as the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the total number of miles of operation of such applicant's motor vehicles, railroad cars, locomotives and airplanes within and without this State, and such amount of sales and use tax as the applicant has paid in this State during said refund period in excess of the amount so computed shall be refunded to the applicant.

(b) The Commissioner of Revenue shall make refunds annually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, article 12 of G. S. 131), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit

of sales and use taxes paid under this article by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to organizations, corporations and institutions which are governmental agencies, owned and controlled by the federal, State or local governments; provided that hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, article 12 of G. S. 131, shall not be excluded from the refund provisions contained in this subsection but shall be entitled to the refunds herein provided with respect to all sales and use taxes paid on and after July 1, 1961. In order to receive the refund herein provided for, such institutions and organizations shall file a written request for said refund on or before the fifteenth day of April following the close of each calendar year, except in the case of hospitals and medical accommodations operated under the Hospital Authorities Law, article 12 of G. S. 131, such request or requests for refund with respect to such taxes paid, directly or indirectly, prior to January 1, 1963, unless heretofore filed, shall be filed before April 15, 1964, and such request or requests for refund shall be substantiated by such proof as the Commissioner of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Commissioner may otherwise require.

(c) The Commissioner of Revenue shall make refunds annually to all counties and incorporated cities and towns in this State of sales and use taxes paid under this article by said counties and incorporated cities and towns on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such counties, incorporated cities and towns in this State on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such counties and incorporated cities and towns in this State shall be construed as sales or use tax liability incurred on direct purchases by such counties and incorporated cities and towns, and such counties and incorporated cities and towns may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any bodies, agencies or political subdivisions of the State not specifically named herein. In order to receive the refund herein provided for, counties and incorporated cities and towns in this State shall file a written request for said refund within six months of the close of the fiscal year of the counties and incorporated cities and towns seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Commissioner may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Commissioner may otherwise require. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1963, cc. 169, 1134.)

Cross Reference. — See notes to § 105-164.4.

Editor's Note.—The 1961 amendment, effective July 1, 1961, deleted from the caption the reference to interstate commerce, designated the former language of the section as subsection (a) and added subdivisions (b) and (c).

The first 1963 amendment substituted in the last sentence of subsection (b) the words "on or before the fifteenth day of April following" for the words "within sixty days of."

The second 1963 amendment changed subsection (b) by inserting the matter in parentheses in the first sentence, adding the proviso to the third sentence thereof, and rewriting the last sentence.

Division V. Records Required to Be Kept.

§ 105-164.24. Separate accounting required. — Every retailer shall keep separate records disclosing sales of tangible personal property taxable under this article and sales transactions not taxable because exempt under G. S. 105-164.13 or elsewhere excluded from taxation. Such records shall be kept in such form as may be accurately and conveniently checked by the Commissioner or his authorized agents and unless such records shall be kept the exemptions and exclusions provided in this article shall not be allowed and it shall be the duty of the Commissioner or his agents to assess a tax upon the total gross sales at the rate levied upon retail sales and if records are not kept disclosing gross sales, it shall be the duty of the Commissioner to assess a tax upon an estimation of sales based upon the best information available. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5.)

Editor's Note.— The 1959 amendment changed the number "105-176" in the fourth line to "105-164.13."

§ 105-164.26. Presumption that sales are taxable.

Quoted in Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

§ 105-164.27: Repealed by Session Laws 1961, c. 826, s. 2.

Editor's Note.—The act repealing this section is effective as of July 1, 1961.

Division VII. Failure to Make Returns; Overpayments.

§§ 105-164.33, 105-164.34: Repealed by Session Laws 1963, c. 1169, s. 3, effective July 1, 1963.

§ 105-164.35. Excessive payments; recomputing tax.

Editor's Note. — As only subdivisions (2) to (5) were affected by the repealing act the first paragraph and subdivision (1) are not set out.

(2) to (5): Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-164.36: Repealed by Session Laws 1959, c. 1259, s. 9.

Editor's Note. — Notwithstanding the repeal of this section, Session Laws 1959, c. 1259, s. 5 (x), purported to amend subsection (a) by inserting the word "registered" before "consumer" in line four.

§ 105-164.38. Tax shall be a lien. — The tax imposed by this article shall be a lien upon the stock of goods and/or any other property of any person subject to the provisions of this article who shall sell out or in any manner transfer his business or stock of goods or shall quit business, and such person shall be required to make out the return provided for under Division IV of this article within thirty (30) days after the date he sold out his business or stock of goods or quit business and his successor in business or the purchaser of the entire stock of goods shall be required to withhold sufficient of the purchase money or money's worth in the event there is an exchange of properties to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the Commissioner showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty-day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. The transferee shall be liable for payment of any sales and/or use taxes due by the transferor to the extent of the purchase price paid by the transferee or fair market value of the property

transferred whichever is greater. The transferee or successor in business and the liability of the transferee or successor in business shall be subject to the provisions of G. S. 105-241.1, 105-241.2, 105-241.3, 105-241.4 and to other remedies for the collection of taxes to the same extent as if the transferee or successor in business had incurred the original tax liability. (1957, c. 1340, s. 5; 1963, c. 1169, s. 3.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, rewrote the first sentence and added the third and fourth sentences.

§ 105-164.41. Excess payments; refunds. — If upon examination of any monthly return made under this article, it appears that an amount of tax has been paid in excess of that properly due, then the amount in excess shall be credited against any tax or installment thereof then due from the taxpayer, under any other subsequent monthly return, or shall be refunded to the taxpayer by certificate of overpayment issued by the Commissioner to the State Auditor, and the Auditor shall issue his warrant on the Treasurer, which warrant shall be payable out of any funds appropriated for that purpose. (1957, c. 1340, s. 5; 1963, c. 1169, s. 3.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, deleted "which shall be investigated and approved by the Attorney General" following the words "State Auditor."

§ 105-164.42: Repealed by Session Laws 1959, c. 1259, s. 9.

Article 6.

Schedule G. Gift Taxes.

§ 105-188. Gift taxes; classification of beneficiaries; exemptions; rates of tax.

Payments by an employer to the widow of a deceased executive were authorized and allowable as deductions under § 105-147, (23) in computing employer's net income, and were not taxable as gifts under this section. Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962). See note to § 105-147.

§ 105-188.1. Powers of appointment.—(a) The term "general power of appointment" as used in this article means any power of appointment exercisable in favor of the person possessing the power, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment. The term "special power of appointment" shall mean any other power of appointment.

(b) Any person having a general power of appointment with respect to any interest in property shall for gift tax purposes be deemed to be the owner of such interest, and accordingly:

(1) If in connection with any gift of property the donor shall give to any person a general power of appointment with respect to any interest in such property, the donor shall be deemed to have given such person such interest in such property.

(2) If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, he shall be deemed to have made a gift of such interest to such person or persons.

(3) If any person holding a general power of appointment with respect to any interest in property shall relinquish such power, he shall be deemed to have made a gift of such interest to the person or persons who shall benefit by such relinquishment.

(c) Neither the exercise nor the relinquishment of a special power of appointment with respect to an interest in property shall be deemed to constitute a gift of such interest in such property.

(d) If in connection with any gift of property the donor shall give to any person a special power of appointment with respect to any interest in such property, the donor shall be deemed for gift tax purposes to have given such interest in equal shares to those persons, not more than two (2), among the possible appointees and takers in default of appointment whom the donor or his executor or administrator may designate in the gift tax return filed with respect to such gift. But the tax shall be computed according to the relationship of the donee of the power to the person designated if:

(1) The possible appointees and takers in default of appointment include any persons more closely related to the donee of the power than to the donor, and

(2) Such computation would produce a higher tax. (1963, c. 942.)

Editor's Note.—The act inserting this section became effective July 1, 1963.

§ 105-192: Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-194. Death of donor within three (3) years; time of assessment.—Where a donor dies within three (3) years after filing a return, gift taxes may be assessed at any time within said three (3) years, or on or before the date of final settlement of donor's State inheritance taxes, whichever is later. (1939, c. 158, s. 606; 1947, c. 501, s. 6; 1959, c. 1259, s. 10.)

Editor's Note.—
The 1959 amendment rewrote this section.

ARTICLE 7.

Schedule H. Intangible Personal Property.

§ 105-201. Accounts receivable.—All accounts receivable on December thirty-first of each year, having a business, commercial or taxable situs in this State, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars ($100.00) of the face value of such accounts receivable, except that taxpayers reporting on a fiscal year basis for income tax purposes under the provisions of article 4 shall report accounts receivable on the last day of such fiscal year ending during the year prior to that December 31 as of which such property would otherwise be reported: Provided, that from the face value of such accounts receivable there may be deducted the accounts payable of the taxpayer as of the valuation date of the accounts receivable: Provided further, that no deduction in any case shall be allowed under this section of any indebtedness of the taxpayer on account of capital outlay, permanent additions to capital or purchase of capital assets.

The term "accounts payable" as used in this section shall not include:

(1) Reserves, secondary liabilities or contingent liabilities except upon satisfactory showing that the taxpayer will actually be compelled to pay the debt or liability;

(2) Taxes of any kind owing by the taxpayer;

(3) Debts owed to a corporation of which the taxpayer is parent or subsidiary or with which the taxpayer is closely affiliated by stock ownership or with which the taxpayer is subsidiary of same parent corporation unless the credits created by such debts are listed if so required by law for ad valorem or property taxation, for taxation at the situs of such credits; or

(4) Debts incurred to purchase assets which are not subject to taxation at the situs of such assets.

From the total face value of accounts receivable returned to this State for taxation by or in behalf of any taxpayer who or which also owns other such accounts receivable as have situs outside of this State, accounts payable of the taxpayer may be deducted only in the proportion which the total face value of accounts receivable taxable under this section bears to the total face value of all accounts receivable of the taxpayer.

The term "accounts payable" as used in this section shall be deemed to include current notes payable of the taxpayer incurred to secure funds which have been actually paid on his current accounts payable within one hundred and twenty days prior to the date as of which the intangible tax return is made.

Indebtedness of commercial factors incurred directly for the purchase of accounts receivable may be deducted from the total value of such accounts receivable. (1939, c. 158, s. 703; 1941, c. 50, s. 8; 1951, c. 643, s. 6; 1957, c. 1340, s. 7; 1959, c. 1259, s. 6.)

Editor's Note.—

The 1959 amendment inserted beginning in line ten of the first paragraph the words "as of the valuation date of the accounts receivable."

§ 105-202. Bonds, notes, and other evidences of debt. — All bonds, notes, demands, claims, deposits or investments in out-of-State building and loan and savings and loan associations and other evidences of debt however evidenced, whether secured by mortgage, deed of trust, judgment or otherwise, or not so secured, having a business, commercial or taxable situs in this State on December thirty-first of each year shall be subject to annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars ($100.00) of the actual value thereof, except that taxpayers reporting on a fiscal year basis for income tax purposes under the provisions of article 4 shall report evidences of debt on the last day of such fiscal year ending during the year prior to the December 31 as of which such property would otherwise be reported: Provided, that from the actual value of such bonds, notes, demands, claims and other evidences of debt there may be deducted like evidences of debt owed by the taxpayer as of the valuation date of the receivable evidences of debt. The term "like evidences of debt" deductible under this section shall not include:

(1) Accounts payable;
(2) Taxes of any kind owing by the taxpayer;
(3) Reserves, secondary liabilities or contingent liabilities except upon satisfactory showing that the taxpayer will actually be compelled to pay the debt or liability;
(4) Evidences of debt owed to a corporation of which the taxpayer is parent or subsidiary or with which the taxpayer is closely affiliated by stock ownership or with which the taxpayer is subsidiary of same parent corporation, unless the credits created by such evidences of debt are listed, if so required by law for ad valorem or property taxation, for taxation at the situs of such credits; or
(5) Debts incurred to purchase assets which are not subject to taxation at the situs of such assets.

From the total actual value of bonds, notes, demands, claims and other evidences of debt returned to this State for taxation by or in behalf of any taxpayer who or which also owns other such evidences of debt as have situs outside of this State, like evidences of debt owed by the taxpayer may be deducted only in the proportion which the total actual value of evidences of debt taxable under this section bears to the total actual value of all like evidences of debt owed by the taxpayer.

The tax levied in this section shall not apply to bonds, notes and other evidences of debt of the United States, State of North Carolina, political subdivisions of this State or agencies of such governmental units, but the tax shall

apply to all bonds and other evidences of debt of political subdivisions and governmental units other than those specifically excluded herein.

In every action or suit in any court for the collection on any bonds, notes, demands, claims or other evidences of debt, the plaintiff shall be required to allege in his pleadings or to prove at any time before final judgment is entered

(1) That such bonds, notes or other evidences of debt have been assessed for taxation for each and every tax year, under the provisions of this article, during which the plaintiff was owner of same, not exceeding five years prior to that in which the suit or action is brought; or

(2) That such bonds, notes or other evidences of debt sued upon are not taxable hereunder in the hands of the plaintiff; or

(3) That the suitor has not paid, or is unable to pay such taxes, penalties and interest as might be due, but is willing for the same to be paid out of the first recovery on the evidence of debt sued upon.

When in any action at law or suit in equity it is ascertained that there are unpaid taxes, penalties and interest due on the evidence of debt sought to be enforced, and the suitor makes it appear to the court that he has not paid or is unable to pay said taxes, penalties and interest, but is willing for the same to be paid out of the first recovery on the evidence of debt, the court shall have authority to enter as a part of any judgment or decretal order in said proceedings that the amount of taxes, penalties and interest due and owing shall be paid to the proper officer out of the first collection on said judgment or decree. The title to real estate heretofore or hereafter sold under a deed of trust shall not be drawn in question upon the ground that the holder of the notes secured by such deed of trust did not list and return the same for taxation as required by this article. (1939, c. 158, s. 704; 1947, c. 501, s. 7; 1957, c. 1340, s. 7; 1959, c. 1259, s. 6; 1963, c. 1169, s. 4.)

Editor's Note.—

The 1959 amendment struck out of the proviso in the first paragraph the words "on December thirty-first of the same year" and inserted in lieu thereof the words "as of the valuation date of the receivable evidences of debt."

The 1963 amendment, effective July 1, 1963, inserted "deposits or investments in out-of-State building and loan and savings and loan associations" near the beginning of this section.

§ 105-206. When taxes due and payable; date lien attaches; nonresidents; forms for returns; extensions.

Quoted in Allen v. Currie, 254 N. C. 636, 119 S. E. (2d) 917 (1961).

§§ 105-207, 105-208: Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-212. Institutions exempted; conditional and other exemptions.

Purpose of 1947 Amendment.—The purpose of the 1947 amendment to this section was not to exempt any intangibles theretofore subject to the intangible personal property tax, but to dispel any idea that intangibles, otherwise exempt, would be subject to the intangible personal property tax because a fiduciary domiciled in this State held and controlled such intangibles. Allen v. Currie, 254 N. C. 636, 119 S. E. (2d) 917 (1961).

The 1947 amendment was intended to apply to an established or continuing trust, not to intangibles constituting general assets of an estate in process of administration. Allen v. Currie, 254 N. C. 636, 119 S. E. (2d) 917 (1961).

§ 105-213. Separate records by counties; disposition and distribution of taxes collected; purpose of tax.

Local Modification. — Burke: 1963, c. 994; Carteret: 1963, c. 759, s. 6; Montgomery: 1963, c. 130.

Cited in Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

§ 105-214. Minimum tax for requirement of filing returns. — When the combined tax of any taxpayer required to be paid under §§ 105-200, 105-201, 105-202, 105-203, 105-204 and 105-205 does not exceed a tax of five dollars ($5.00), no return shall be required to be filed. This section shall not be construed to affect the provisions of § 105-199, and the minimum tax herein provided shall not apply to said section. (1963, c. 1010.)

Editor's Note. — The act inserting this section is effective as of Dec. 31, 1963.

Article 8B.

Schedule I-B. Taxes upon Insurance Companies.

§ 105-228.3. To whom this article shall apply.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 105-228.5. Taxes measured by gross premiums.—Each and every insurance company shall annually pay to the Commissioner of Insurance at the time and at the rates hereinafter specified, a tax measured by gross premiums as hereinafter defined from business done in this State during the preceding calendar year.

Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, shall for the purposes of the taxes levied in this section mean any and all premiums collected in the calendar year (other than for contracts for reinsurance) for policies the premiums on which are paid by or credited to persons, firms or corporations resident in this State, or in the case of group policies for any contracts of insurance covering persons resident within this State, with no deduction for considerations paid for annuity contracts which are subsequently returned except as below specified, and with no other deduction whatsoever except for premiums returned under one or more of the following conditions; premiums refunded on policies rescinded for fraud or other breach of contract; premiums which were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate; and in the case of group annuity contracts the premiums returned by reason of a change in the composition of the group covered. Said gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend or in any other manner whatsoever, except in the case of premiums waived by any of said companies pursuant to a contract for waiver of premium in case of disability.

Gross premiums from business done in this State in the case of contracts for fire insurance, casualty insurance, and any other type of insurance except life and annuity contracts as above specified, including contracts of insurance required to be carried by the Workmen's Compensation Act, shall for the purposes of the taxes levied in this section mean any and all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workmen's Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether such premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for such premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and

without any other deduction except for return of premiums, deposits, fees or assessments for adjustment of policy rates or for cancellation or surrender of policies.

In determining the amount of gross premiums from business in this State all gross premiums received in this State, or credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property or risks resident or located in this State except for such premiums as are properly reported and properly allocated as being received from business done in some other nation, territory, state or states, and except for premiums from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

On the basis of the gross amount of premiums, as above defined, each company or self-insurer shall pay as to:

The amounts collected on contracts applicable to liabilities under the Workmen's Compensation Act, a tax at the rate of one and six-tenths per cent (1.6%) in the case of domestic insurance companies and domestic self-insurers or self-insurers domesticated and doing business in North Carolina; and on the amounts collected on contracts applicable to liabilities under the Workmen's Compensation Act in the case of foreign and alien insurance companies, or the equivalent thereof in the case of foreign and alien self-insurers, except those which have been domesticated and are doing business in North Carolina, a tax at the rate of four per cent (4%).

The amounts collected on annuities and all other contracts of insurance issued by domestic life insurance companies a tax at the rate of one and one-half per cent (1½%).

The amounts collected on contracts of insurance issued by domestic insurance companies other than life insurance companies and other than corporations organized under chapter 57 of the General Statutes, a tax of one per cent (1%) or, in lieu thereof, any such company shall pay an income tax computed as in the case of other corporations, whichever is the greater.

The amounts collected on annuities and all other contracts of insurance a tax at the rate of two and one-half per cent (2½%) in the case of foreign and alien companies.

The amounts collected on contracts of insurance applicable to fire and lightning coverage (marine and automobile policies not being included), a tax at the rate of one per cent (1%). This tax shall be in addition to all other taxes imposed by G. S. 105-228.5.

The premium tax rates herein provided shall be applicable with respect to all premiums collected during the calendar year, 1955, and each subsequent year.

The taxes levied herein measured by premiums shall be in lieu of all other taxes upon insurance companies except: Fees and licenses under this article, or as specified in chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by chapter 118 of the General Statutes of North Carolina; taxes imposed by article 5 of chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State.

For the tax above levied as measured by gross premiums the president, secretary, or other executive officer of each insurance company doing business in this State shall within the first fifteen days of March in 1946 and in each year thereafter file with the Commissioner of Insurance a full and accurate report of the total gross premiums as above defined collected in this State during the preceding calendar year. The report shall be in such form and contain such information as the Commissioner of Insurance may specify, and the report shall be verified by the oath of the company official transmitting the same or by some principal officer at the home or head office of the company or association in this

country. At the time of making such report the taxes above levied with respect to the gross premiums shall be paid to the Commissioner of Insurance. The provisions above shall likewise apply as to reports and taxes for any firm, corporation, or association exchanging reciprocal or interinsurance contracts, and said reports and taxes shall be transmitted by their attorneys in fact.

The provisions as to reports and taxes as measured by gross premiums shall not apply to farmer's mutual assessment fire insurance companies above specified or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members.

With respect to the taxes levied in this section on the equivalent of premiums of self-insurers under the provisions of the Workmen's Compensation Act, the reports required herein shall be transmitted to and the taxes collected by the North Carolina Industrial Commission as provided in subsection (j) of § 97-100 of the General Statutes of North Carolina. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096.)

Editor's Note.—

The 1959 amendment inserted the tenth paragraph.

The 1961 amendment deleted the proviso to the tenth paragraph, which formerly read "provided, that this tax shall not be levied on contracts of insurance written on property in unprotected areas."

The 1963 amendment changed the provisions of the sixth paragraph relating to self-insurers.

Constitutionality of 1959 Amendment.— Session Laws 1959, c. 1211, amending this section so as to impose a tax on fire insurance contracts for the purpose of providing funds for the payment of pensions to retired firemen, c. 1212, rewriting article 3 of chapter 118 to create a firemen's pension fund to be derived from the proceeds of the tax, and c. 1273, appropriating moneys from the general fund to the pension fund, limited to revenues to be produced by the tax, although separately enacted must be treated as a single statute. As so considered, they are unconstitutional under Const., Art. I, § 17, since they impose a tax on one group, a limited group of insurance companies, for the sole purpose of paying the salaries of a particular class or group of public employees. Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962), decided under this section and § 118-18 et seq. as they stood prior to their amendment in 1961.

Legislative History of Section. — See Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

Validity of Section Tested by § 105-267. —The validity of provisions of this section can be tested only by the exclusive procedure set out in § 105-267. Great American Ins. Co. v. Gold, 254 N. C. 168, 118 S. E. (2d) 792 (1961).

§ 105-228.9. Powers of the Commissioner of Insurance.

Applied in Great American Ins. Co. v. Gold, 254 N. C. 168, 118 S. E. (2d) 792 (1961).

Article 8C.

Schedule I-C. Excise Tax on Banks.

§ 105-228.11. To whom this article shall apply.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

§ 105-228.12. Imposition of an excise tax.—An annual excise tax is hereby levied on every bank located and doing business within this State, including each national banking association, for the privilege of transacting business in this State during the calendar year, according to or measured by its entire net income as defined herein received or accrued from all sources during the preceding calendar year hereinafter referred to as taxable year, at the rate of four and one-half per cent (4½%) of such entire net income. The minimum tax assessable to any one bank shall be ten dollars ($10.00). The liability for the tax imposed by this section shall arise upon the last day of each preceding

taxable year, and shall be based upon and measured by the entire net income of each bank or trust company for such preceding taxable year, including all income received from government securities (whether or not taxable under article 4 of this chapter) in such year except for any interest that may be allowed as deductible from gross income under G. S. 105-228.16; provided, that the tax herein levied shall not be collectible for any year from any bank or trust company which fails to engage in business for any part of the year for which levied. This section shall be effective on and after December 31, 1959, so that the excise tax for 1960 shall be measured by net incomes for the taxable year 1959 and the liability therefor shall arise on December 31, 1959. In the case of a merger of two or more banks during the preceding calendar year the tax of the resultant bank shall be measured by the entire net income of all constituent banks during such preceding calendar year. As used in this article the words "taxable year" shall mean the calendar year next preceding the calendar year for which and during which the excise tax is levied. (1957, c. 1340, s. 8; 1959, c. 1259, s. 7.)

Editor's Note. — The 1959 amendment, effective Dec. 31, 1959, rewrote this section.

Article 8D.

Schedule I-D. Taxation of Building and Loan Associations and Savings and Loan Associations.

§ 105-228.22. To whom this article shall apply.

Cited in Lenoir Finance Co. v. Currie, 254 N. C. 129, 118 S. E. (2d) 543 (1961).

Article 9.

Schedule J. General Administration; Penalties and Remedies.

§ 105-230. Charter canceled for failure to report.

This section was not intended to deprive a corporation of its properties nor to penalize innocent parties. Page v. Miller, 252 N. C. 23, 113 S. E. (2d) 52 (1960).

Effect of Suspension of Charter on Corporation's Capacity to Sue. — Allegations in the complaint to the effect that plaintiff corporation's charter was temporarily suspended under this section less than a year prior to the institution of the action do not disclose that the corporation did not have legal capacity to institute the action. Mica Industries, Inc. v. Penland, 249 N. C. 602, 107 S. E. (2d) 120 (1959).

Cited in Guilford Builders Supply Co. v. Reynolds, 249 N. C. 612, 107 S. E. (2d) 80 (1959).

§ 105-231. Penalty for exercising corporate functions after cancellation or suspension of charter.

This section was not intended to deprive a corporation of its properties nor to penalize innocent parties. Page v. Miller, 252 N. C. 23, 113 S. E. (2d) 52 (1960).

§ 105-232. Corporate rights restored; receivership and liquidation.

Cited in Mica Industries, Inc. v. Penland, 249 N. C. 602, 107 S. E. (2d) 120 (1959); Guilford Builders Supply Co. v. Reynolds, 249 N. C. 612, 107 S. E. (2d) 80 (1959).

§ 105-236. Penalties.—Except as otherwise provided in this subchapter, and subject to the provisions of G. S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks.—When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department, shall refuse payment upon such check on account of insufficient funds of the drawer in such bank, and such check shall be returned to the Department of Revenue, an

additional tax shall be imposed, which additional tax shall be equal to ten per cent (10%) of the obligation for the payment of which such check was tendered: Provided, however, that in no case shall the additional tax so imposed be less than one dollar ($1.00) nor more than two hundred dollars ($200.00). Provided, further, no additional tax shall be imposed if the Commissioner of Revenue shall find that the drawer of such check, at the time it was presented to the drawee, had funds deposited to his credit in any bank of this State sufficient to pay such check, and, by inadvertence, failed to draw the check upon the bank in which he had such funds on deposit. The additional tax hereby imposed shall not be waived or diminished by the Commissioner of Revenue. This section shall apply to all taxes levied or assessed by the State.

(2) Failure to Obtain a License.—For failure to obtain a license before engaging in a business, trade or profession for which a license is required, there shall be assessed an additional tax equal to five per cent (5%) of the amount prescribed for such license per month or fraction thereof until paid, which additional tax shall not exceed twenty-five per cent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return.—In case of failure to file any return required under this subchapter on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on such return, as a penalty, five per cent (5%) of the amount of such tax if the failure is for not more than one month, with an additional five per cent (5%) for each additional month, or fraction thereof, during which such failure continues, not exceeding twenty-five per cent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due.—In the case of failure to pay any tax when due, without intent to evade the tax, there shall be an additional tax, as a penalty, of ten per cent (10%) of the tax; provided, that such penalty shall in no event be less than five dollars ($5.00).

(5) Negligence.—For negligent failure to comply with any of the provisions of this subchapter, or rules and regulations issued pursuant thereto, without intent to defraud, there shall be assessed, as a penalty, an additional tax of ten per cent (10%) of the deficiency due to such negligence; provided, that in the case of income tax, if gross income is understated by as much as twenty-five per cent (25%), or deductions, exclusive of personal exemptions, are overstated by as much as twenty-five per cent (25%) of gross income, or if there is a combination of understatement of gross income and overstatement of deductions, exclusive of personal exemptions, equaling twenty-five per cent (25%) of gross income, there shall be assessed, as a penalty, an additional tax equal to twenty-five per cent (25%) of the total deficiency. If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.

(6) Fraud.—If there is a deficiency or delinquency in payment of any tax levied by this subchapter, due to fraud with intent to evade the tax, there shall be assessed, as a penalty, an additional tax equal to fifty per cent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax.—Any person who wilfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat any tax imposed by this subchapter, or the pay-

ment thereof, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000.00), or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

(8) Wilful Failure to Collect or Pay Over Tax.—Any person required under this subchapter to collect, account for, and pay over any tax imposed by this subchapter who wilfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed six (6) months, or by both such fine or imprisonment.

(9) Wilful Failure to File Return, Supply Information, or Pay Tax. — Any person required under this subchapter to pay any tax, to make a return, to keep any records or to supply any information, who wilfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law, or regulations issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed two hundred dollars ($200.00), or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment.

(10) Failure to File Informational Returns.—

a. For failure to file a partnership or a fiduciary informational return when such returns are due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of such delinquency, such tax, however, in the aggregate not to exceed the sum of twenty-five dollars ($25.00). When assessed against a fiduciary, the tax herein provided shall be paid by the fiduciary and shall not be passed on to the trust estate.

b. For failure to file timely statements of payments to another person or persons with respect to wages, dividends, rents or interest paid to such other person or persons, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of such penalties for each tax year not to exceed one hundred dollars ($100.-00), and in addition thereto, if the Commissioner shall request the payor to file such statements and shall set a date on or before which such statements shall be filed, and the payor shall fail to file such statements within such time, the amounts claimed on payor's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payor failed to comply with the Commissioner's request with respect to such statements.

(11) The failure to do any act required by or under the provisions of this subchapter, or by subchapter V of chapter 105 or chapter 18 of the General Statutes shall be deemed an act committed in part at the office of the Commissioner of Revenue in Raleigh. The certificate of the Commissioner of Revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this subchapter, or by subchapter V of chapter 105 or chapter 18 of the General Statutes, shall be prima facie evidence that such tax has not been paid, that such return has not been filed or that such information

has not been supplied. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6.)

Editor's Note.—

The 1959 amendment rewrote this section.

The 1963 amendment, effective July 1, 1963, rewrote subdivision (4) to make the penalty mandatory and change it from 5% per month during which failure continued to 10%; deleted "but in no event less than twenty-five dollars ($25.00)" twice in the first sentence of subdivision (5); and substituted "subdivision (6)" for "subdivisions (3) or (6)" in the second sentence of subdivision (5).

§ 105-237.1. **Compromise of liability.**—(a) The Commissioner of Revenue, with the approval of the Attorney General, is authorized to compromise the amount of liability of any taxpayer for taxes due under subchapters I or V of this chapter or under chapter 18 of the General Statutes and to accept in full settlement of such liability a lesser amount than that asserted to be due when in the opinion of the Commissioner and the Attorney General such compromise settlement is in the best interest of the State. When made other than in the course of litigation in the courts of the State on an appeal from an administrative determination or in a civil action brought to recover from the Commissioner, the basis for such compromise must also conform to the conditions set out in this section. Such compromise settlement may be made only after a final administrative or judicial determination of the liability of the taxpayer.

Such a compromise settlement may be made only upon a finding that:

(1) There is a reasonable doubt as to the amount of the liability of the taxpayer under the law and the facts; or

(2) The taxpayer is insolvent and the Commissioner probably could not otherwise collect an amount equal to or in excess of the amount offered in compromise; or

(3) Collection of a greater amount than that offered in compromise settlement is improbable, and the funds offered in the settlement, or a substantial portion thereof, come from sources from which the Commissioner could not otherwise collect; or

(4) A federal tax assessment arising out of the same facts has been compromised with the federal government on the same or a similar basis as that proposed to the State and the Commissioner could probably not collect an amount equal to or in excess of that offered in compromise.

For the purposes of this section a taxpayer may be considered insolvent only if there is an established status of insolvency by either a judicial declaration of a status necessarily or ordinarily involving insolvency or by a legal proceeding in which the insolvency of the taxpayer would ordinarily be determined or thereby be made evident or if it is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future. Whenever a compromise is made by the Commissioner pursuant to this section, there shall be placed on file in the office of the Commissioner a written opinion, signed by the Commissioner and the Attorney General, setting forth the amount of tax or additional tax assessed, the amount actually paid in accordance with the terms of the compromise, and a summary of the facts and reasons upon which acceptance of the compromise is based, provided, however, that such opinion shall not be required with respect to the compromise of any taxpayer's liability where the unpaid amount of tax assessed (including interest, penalty and additional tax) is less than one hundred dollars ($100.00).

(b) Whenever an assessment of taxes or additional taxes is based upon an action of the federal government in making an assessment of taxes and the federal assessment is subsequently settled, compromised or adjusted, the Commissioner may, in his discretion, settle, compromise or adjust the State's tax assess-

ment upon the same basis as the federal settlement, compromise or adjustment. (1957, c. 1340, s. 10; 1959, c. 1259, s. 8.)

Editor's Note. — The 1959 amendment designated all of the former section as subsection (a) and added subsection (b).

§ 105-241.1. Additional taxes; assessment procedure.

(c) Any taxpayer who objects to a proposed assessment of tax or additional tax shall be entitled to a hearing before the Commissioner of Revenue provided application therefor is made in writing within thirty (30) days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Commissioner of Revenue shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of tax or additional tax due from the taxpayer as finally determined by the Commissioner shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Commissioner at any time within thirty days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Commissioner of Revenue shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have thirty days after the receipt of the same from the Commissioner of Revenue to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

Provided, the taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or indefinite time, and if such waiver is accepted by the Commissioner he may institute assessment procedures at any time within the time extended by such waiver. This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under subchapter V of chapter 105 and chapter 18 of the General Statutes.

(i) All assessments of taxes or additional taxes (exclusive of penalties assessed thereon) shall bear interest at the rate of one-half per cent (½%) per month or fraction thereof from the time said taxes or additional taxes were due to have been paid until paid.

(j) This section is in addition to and not in substitution of any other provision of the General Statutes relative to the assessment and collection of taxes and shall not be construed as repealing any other provision of the General Statutes. (1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 1259, s. 8.)

Cross Reference. — See note to § 105-266.1.

Editor's Note.—

The 1959 amendment added the last paragraph to subsection (c), changed the designation of former subsection (i) to subsection (j) and inserted present subsection (i). As only these subsections were affected by the amendment the rest of the section is not set out.

Applied in Brauff v. Commissioner of Revenue, 251 N. C. 452, 111 S. E. (2d) 620 (1959).

Cited in In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

§ 105-241.2. Administrative review.

Cross Reference.—See notes to §§ 105-262, 105-266.1.

This Section and § 105-241.3 Give Taxpayer Benefit of § 143-306 et seq. — The legislature of 1955 took recognition of the fact that the remedy afforded by § 105-267 may at times place an undue burden on the taxpayer, and broadened the provisions by which a taxpayer may have his liability determined. Sections 143-306 to

143-316 permit judicial review of any decision rendered by an administrative agency in a proceeding in which the legal rights of specific parties are determined after an agency hearing. In this section and § 105-241.3 the legislature gave a person charged with tax liability the benefit of § 143-306 et seq. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Procedure. — When the Commissioner has determined a tax liability exists, the person assessed may, without the payment of the tax so assessed, apply to the Tax Review Board for a determination of his tax liability. The Board, after a review of the factual situation and the application of the statute to that situation, renders its decision. If not satisfied with the decision of the Tax Review Board, the taxpayer may take an appeal by complying with statutory procedure and without the payment of the tax. This appeal is to the superior court under § 105-241.3. The jurisdiction thus conferred on the superior court is not original but appellate. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Board May Not Pass on Constitutionality of Statute.—This section and § 105-241.3 do not give the administrative board authority or jurisdiction to pass on the constitutionality of a statute. Great American Ins. Co. v. Gold, 254 N. C. 168, 118 S. E. (2d) 792 (1961).

Applied in Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962).

Cited in In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

§ 105-241.3. Appeal without payment of tax from Tax Review Board decision.

Cross Reference.—See notes to §§ 105-241.2, 105-241.4.

Board May Not Pass on Constitutionality of Statute.—See same catchline under § 105-241.2.

This section and § 143-307 are in pari materia and it is the court's duty to give effect to both if possible. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

Decisions of Tax Review Board Are Subject to Review Only Pursuant to Chapter 143, Article 33.—The Tax Review Board is an "administrative agency" within the purview of § 143-306. It is an agency of the executive branch of the State government, has no authority or duties with respect to the granting or revocation of licenses, and its decisions are not subject to review under any statute or statutes other than chapter 143, article 33. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

This Section Gives No Right of Appeal to Commissioner of Revenue.—The Commissioner of Revenue has no right to appeal from the decision of the Review Board pursuant to any provision of this section. If he has a right of appeal it is by virtue of chapter 143, article 33. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

But He Is Entitled to Appeal under § 143-307.—The Tax Review Board is an administrative agency of the State within the purview of § 143-306 and the Commissioner of Revenue is entitled to appeal under § 143-307 from a decision of the Board reversing in part an assessment of taxes made by the Commissioner. This section does not impliedly amend the prior statute so as to preclude the right of the Commissioner to appeal, but the two statutes must be construed together and effect given the provisions of both. In re Halifax Paper Co., Inc., 259 N. C. 589, 131 S. E. (2d) 441 (1963).

§ 105-241.4. Action to recover tax paid.

Taxpayer May Abandon Administrative Review and Seek Relief under Section. — Having taken advantage of the opportunity for a review by the Tax Review Board under § 105-241.2, the person assessed may, if he so elects, abandon the process of administrative review and seek relief from the superior court under its original jurisdiction. Of course, if he asks the superior court to exercise its original jurisdiction he must, as a condition precedent thereto, pay his tax under protest and sue to recover as provided by § 105-267. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Appeal to Supreme Court. — It is immaterial whether the superior court determines the taxpayer's liability in an action originally instituted in that court or as an appellate court. The taxpayer is permitted in either event to review the judgment by appeal to the Supreme Court under this section. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Applied in Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962).

§ 105-242. Warrant for the collection of taxes; certificate or judgment for taxes.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the set-off of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Revenue or by any officer having authority to serve summonses. Provided, if the taxpayer no longer resides within North Carolina or cannot be located therein the notice may be served upon the taxpayer by registered or certified mail, return receipt requested, and such service shall be conclusively presumed to have been made upon the exhibition of the return receipt. Said notice shall show:

(1) The name of the taxpayer and his address, if known;
(2) The nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no set-off against the taxpayer, he shall within ten days after service of said notice, answer the same by sending to the Commissioner of Revenue by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or set-off, he shall state the same in writing under oath, and, within ten days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or set-off, he shall so advise the garnishee in writing within ten days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or set-off, and any amount attached or garnished hereunder which is not affected by such defense or set-off shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or set-off, and with like effect. If the Commissioner shall not admit the defense or set-off, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within ten days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any de-

fense or set-off of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten per cent of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in this subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within twelve months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by § 105-407, and if such payment is denied, said party may appeal from the determination of the Commissioner under the provisions of G. S. 105-241.4; provided, that in taking an appeal to the superior court, said party may appeal either to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied.

This subsection shall be applicable with respect to the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities, officials and employees of political subdivisions of this State and their agencies and instrumentalities, and also officials and employees of the United States and its agencies and instrumentalities insofar as the same is permitted by the Constitution and laws of the United States. In the case of State or federal employees, the notice shall be served upon such employee and upon the head or chief officer of the department, agency, instrumentality or institution by which the taxpayer is employed. In case the taxpayer is an employee of a political subdivision of the State, the notice shall be served upon such employee and upon the chief fiscal officer, or any officer or person charged with making up the payrolls, or disbursing funds, of the political subdivision by which the taxpayer is employed. Such head or chief officer or fiscal officer or other person as specified above shall thereafter, subject to the limitations herein provided, make deductions from the salary or wages due or to become due the taxpayer and remit same to the Commissioner until the tax, penalty, interest and costs allowed by law are fully paid. Such deductions and remittances shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(c) In addition to the remedy herein provided, the Commissioner of Revenue

is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court (said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and on personalty only from the date of the levy on such personalty and upon the execution thereon no homestead or personal property exemption shall be allowed).

Except as provided in subsection (e) of G. S. 105-241.2, no sale of real or personal property shall be made under any execution issued on a certificate docketed pursuant to the provisions of this subsection before the administrative action of the Commissioner of Revenue or the Tax Review Board is completed when a hearing has been requested of the Commissioner or a petition for review has been filed with the Tax Review Board, nor shall such sale be made before the assessment on which the certificate is based becomes final when there is no request for a hearing before the Commissioner or petition for review by the Tax Review Board. Neither the title to real estate nor to personal property sold under execution issued upon a certificate docketed under this subsection shall be drawn in question upon the ground that the administrative action contemplated by this paragraph was not completed prior to the sale of such property under execution. Nothing in this paragraph shall prevent the sheriff to whom an execution is issued from levying upon either real or personal property pending an administrative determination of tax liability and, in the case of personal property, the sheriff may hold such property in his custody or may restore the execution defendant to the possession thereof upon the giving of a sufficient forthcoming bond. Upon a final administrative determination of the tax liability being had, if the assessment or any part thereof is sustained, the sheriff shall, upon request of the Commissioner of Revenue, proceed to advertise and sell the property under the original execution notwithstanding the original return date of the execution may have expired.

A certificate or judgment in favor of the State or the Commissioner of Revenue for taxes payable to the Department of Revenue, whether docketed before or after the effective date of this paragraph, shall be valid and enforceable for a period of ten years from the date of docketing. When any such certificate or judgment, whether docketed before or after the effective date of this paragraph, remains unsatisfied for ten years from the date of its docketing, the same shall be unenforceable and the tax represented thereby shall abate. Upon the expiration of said ten-year period, the Commissioner of Revenue or his duly authorized deputy shall cancel of record said certificate or judgment. Any such certificate or judgment now on record which has been docketed for more than ten years shall, upon the request of any interested party, be canceled of record by the Commissioner of Revenue or his duly authorized deputy; provided, in the event of the death of the judgment debtor or his absence from the State before the expiration of the ten-year period herein provided, the running of said ten-year period shall be stopped for the period of his absence from the State or during the pendency of the settlement of the estate and for one year thereafter, and the time elapsed during the pendency of any action or actions to set aside the judgment debtor's conveyance or conveyances as fraudulent, or the time during the pendency of any insolvency proceeding, or the time during the existence of any statutory or judicial bar to the enforcement of the judgment shall not be counted in computing the running of said ten-year period. And, provided further, that any

execution sale which has been instituted upon any such judgment before the expiration of the ten-year period may be completed after the expiration of the ten-year period, notwithstanding the fact that resales may be required because of the posting of increased bids. Provided further, that, notwithstanding the expiration of the ten-year period provided and notwithstanding the fact that no proceedings to collect the judgment by execution or otherwise has been commenced within the ten-year period, the Commissioner of Revenue may accept any payments tendered upon said judgments after the expiration of said ten-year period.

If the Commissioner of Revenue shall find that it will be for the best interest of the State in that it will probably facilitate, expedite or enhance the State's chances for ultimately collecting a tax due the State, he may authorize a deputy or agent to release the lien of a State tax judgment or certificate of tax liability upon a specified parcel or parcels of real estate by noting such release upon the judgment docket where such certificate of tax liability is recorded. Such release shall be signed by the deputy or agent and witnessed by the clerk of court or his deputy or assistant and shall be in substantially the following form: "The lien of this judgment upon (insert here a short description of the property to be released sufficient to identify it, such as a reference to a particular tract described in a recorded instrument) is hereby released, but this judgment shall continue in full force and effect as to other real property to which it has heretofore attached or may hereafter attach. This ..... day of ....., 19...

.....
Deputy Collector N. C. Department of Revenue

WITNESS:

..... C. S. C."

The release shall be noted on the judgment docket only upon conditions prescribed by the Commissioner and shall have effect only as to the real estate described therein and shall not affect any other rights of the State under said judgment.

(1959, c. 368; 1963, c. 1169, s. 6.)

Editor's Note.—

The 1959 amendment added the part of subsection (c) beginning with paragraph four.

The 1963 amendment, effective July 1, 1963, inserted the present third sentence in subsection (b), added the proviso at the end of the fourth sentence of the third paragraph of subsection (c) and also added the fifth and sixth sentences at the end of such paragraph.

As only subsections (b) and (c) were affected by the amendments the rest of the section is not set out.

§ 105-250.1. Distributions of coin-operated machines required to make semi-annual reports.—Every person, firm or corporation who or which owns and places on location other than on his or its own premises, under any lease or rental agreement, loan or otherwise, or which sells coin-operated machines or vending machines of any type whatsoever upon which a tax is levied under §§ 105-65 and 105-65.1 of the General Statutes (or upon which a tax shall hereafter be levied), hereinafter referred to as a distributor, shall file a semi-annual informational report with the Commissioner of Revenue, in duplicate, as of the first day of January and July of each year, setting out the following information:

(1) The name and address of the distributor making the report.

(2) A description of the principal business of such distributor.

(3) A list giving the location of each machine placed or remaining on location under any lease or rental agreement, loan or other arrangement whatsoever, other than by sale, together with the type of each such machine and its serial or other identifying number.

(4) A list giving the location of each machine theretofore sold by the distributor, (whether such sale was for cash, on open account, or under a conditional sale or other title retention contract), together with the

type of each such machine and its serial or other identifying number. Provided, that machines sold by the distributor but known by him to be no longer in service need not be reported.

(5) A list giving the location of each machine, other than those described in Items (3) and (4) above, for the sale or use by, for or in which the distributor sells, leases, services or in any manner furnishes any goods, wares, merchandise, records, equipment, accessories, supplies, parts or any services whatsoever, together with the type of each such machine and its serial or other identifying number.

Provided, that the report required to be made as of June 1, 1949, (or the first report made by any distributor) shall contain a complete and true list of all of the machines described in Items (3), (4) and (5) above, together with the information required by said items, but the semi-annual reports required to be made as of the first day of January and July thereafter need show only those machines placed on location or sold by the distributor or for which the distributor has begun furnishing supplies, equipment and other services since the date as of which the next preceding semi-annual report was made.

As used herein, "location" shall include the name and address of the owner or operator of the place of business where the machine is located, or the address of the premises on which the machine is located and the name of the person principally responsible for the operation of the machine.

Each semi-annual report required by this section shall be made to the license tax division of the Department of Revenue not later than twenty days after the date as of which each report is required to be made.

The Commissioner of Revenue is hereby authorized and empowered to prescribe forms to be used in making the reports required by this section.

Any distributor who shall fail to comply with the provisions of this section and who shall fail, without showing good cause therefor, to make timely, full and accurate reports shall be liable to a penalty equal to the amount of the tax on all the machines described in Items (3) and (4), whether or not the distributor would otherwise be liable for the tax on such machines: Provided, that this shall not be construed as relieving the owner and/or operator of such machines of liability for any tax which may be due thereon. Provided further, if any person, firm or corporation required to make semi-annual informational reports under this section shall fail to do so within the time herein specified, he or it shall be guilty of a misdemeanor and upon conviction, shall be fined or imprisoned in the discretion of the court, and in addition to such fine or imprisonment shall be required to pay the taxes and penalties herein set out. (1949, c. 392, s. 6, 1951, c. 643, s. 9; 1963, c. 294, s. 8.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "January and July" for "June and December" at two places in this section.

§ 105-258. Powers of Commissioner of Revenue; who may sign and verify pleadings, legal documents, etc.—The Commissioner of Revenue, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for any tax imposed by this subchapter, or collecting any such tax, shall have the power to examine, personally, or by an agent designated by him, any books, papers, records, or other data which may be relevant or material to such inquiry, and the Commissioner may summon the person liable for the tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises, to appear before the Commissioner, or his agent, at a time and place named

in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Commissioner or his agent may administer oaths to such person or persons. If any person so summoned refuses to obey such summons or to give testimony when summoned, the Commissioner may apply to the Superior Court of Wake County for an order requiring such person or persons to comply with the summons of the Commissioner, and the failure to comply with such court order shall be punished as for contempt.

In any action, proceeding, or matter of any kind, to which the Commissioner of Revenue is a party or in which he may have an interest, all pleadings, legal notices, proofs of claim, warrants for collection, certificates of tax liability, executions, and other legal documents may be signed and verified on behalf of the Commissioner by the assistant commissioner or by any director or assistant director of any division of the Department of Revenue or by any other agent or employee of the Department so authorized by the Commissioner of Revenue. (1939, c. 158, s. 927; 1943, c. 400, s. 9; 1955, c. 435; 1959, c. 1259, s. 8A.)

Editor's Note.—

The 1959 amendment rewrote the first paragraph.

§ 105-262. Rules and regulations.

Remedies of Taxpayer.—Any interested citizen may procure a copy of the regulations promulgated pursuant to this section and apply the administrator's interpretation of the law to the citizen's tax situation. If, under the regulations, tax liability seems likely, he may present the matter to the Commissioner of Revenue for examination and determination. If the Commissioner assesses a tax, the party who deems himself aggrieved may, as provided by statute, protect himself against an illegal assessment. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Petition will not lie directly to the superior court to have an administrative interpretation promulgated by the Commissioner under this section declared to be erroneous, unlawful or improper. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Interpretation of Commissioner Prima Facie Correct.—While a decision or regulation of the Commissioner of Revenue interpreting a taxing statute is not controlling, the Commissioner of Revenue is authorized by this section to implement taxing statutes, with certain specific exceptions, and his interpretation is made prima facie correct, and such interpretive regulation will ordinarily be upheld when it is not in conflict with the statute and is within the authority of the Commissioner to promulgate. Campbell v. Currie, 251 N. C. 329, 111 S. E. (2d) 319 (1959).

Cited in Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

§ 105-264. Construction of the subchapter; population.

Authority of Commissioner to Construe.—

In accord with 2nd paragraph in original. See Campbell v. Currie, 251 N. C. 329, 111 S. E. (2d) 319 (1959).

The responsibility for interpreting a tax statute is placed on the Commissioner of Revenue by this section, and the Attorney General's opinion in regard thereto is advisory only, by virtue of N. C. Const., art. 3, § 14 and § 114-2. In re Virginia-Carolina Chemical Corp., 248 N. C. 531, 103 S. E. (2d) 823 (1958).

Court Interpretation Prevails.—If there should be a conflict between the interpretation placed upon any of the provisions of the Revenue Act by the Commissioner of Revenue and the interpretation of the courts, the interpretation or construction by the latter will prevail. Campbell v. Currie, 251 N. C. 329, 111 S. E. (2d) 319 (1959).

Cited in Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

§ 105-266.1. Refunds of overpayment of taxes.

This section, by express language, relates to proceedings begun by request for administrative review. It is an extension and enlargement of the policy declared by the legislature in § 105-241.1. This policy is predicated on the theory that an administrative hearing may be preferred by the taxpayer to an action at law to deter-

mine liability for the tax. In 1955 this idea was expanded to permit an appeal from the Commissioner's decision to a Tax Review Board under § 105-241.2. Proceedings so initiated may ultimately find their way to the courts. Kirkpatrick v. Currie, 250 N. C. 213, 108 S. E. (2d) 209 (1959).

§ 105-267. Taxes to be paid; suits for recovery of taxes.

Cross Reference.—

See notes to §§ 105-241.4, 105-262.

Section Is Constitutional.—This section, permitting payment to be made under protest with a right to bring an action to recover the monies so paid, is constitutional and accords the taxpayer due process. Kirkpatrick v. Currie, 250 N. C. 213, 108 S. E. (2d) 209 (1959).

The proper procedure for a taxpayer to determine his liability for a tax is to pay the tax under protest and sue to recover such payment. ET & WNC Transportation Co. v. Currie, 248 N. C. 560, 104 S. E. (2d) 403 (1958).

Alternate Remedy under §§ 105-241.2 and 105-241.3. — The remedy afforded by this section may at times place an undue burden on the taxpayer. The legislature of 1955 took recognition of that fact and broadened the provisions by which the taxpayer might have his liability determined, in the enactment of §§ 105-241.2 and 105-241.3. Duke v. State, 247 N. C. 236, 100 S. E. (2d) 506 (1957).

Burden Is on Taxpayer to Show Exemption. — A taxpayer who challenges a sales tax coverage by virtue of an exemption or exclusion has the burden of showing that he comes within the exemption upon which he relies. Olin Mathieson Chemical Corp. v. Johnson, 257 N. C. 666, 127 S. E. (2d) 262 (1962).

Applied in Good Will Distributors, Inc. v. Currie, 251 N. C. 120, 110 S. E. (2d) 880 (1959); Great American Ins. Co. v. Gold, 254 N. C. 168, 118 S. E. (2d) 792 (1961); Piedmont Canteen Service, Inc. v. Johnson, 256 N. C. 155, 123 S. E. (2d) 582 (1962); Boylan-Pearce, Inc. v. Johnson, 257 N. C. 582, 126 S. E. (2d) 492 (1962); Sale v. Johnson, 258 N. C. 749, 129 S. E. (2d) 465 (1963).

Quoted in Virginia Electric & Power Co. v. Currie, 254 N. C. 17, 118 S. E. (2d) 155 (1961).

§ 105-269. Extraterritorial authority to enforce payment. — The Commissioner of Revenue, with the assistance of the Attorney General, is hereby empowered to bring suits in the courts of other states to collect taxes legally due this State. The officials of other states which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the Secretary of State, under the Great Seal of the State, that such officers have authority to collect the tax shall be conclusive evidence of such authority. Whenever it shall be deemed expedient by the Commissioner of Revenue to employ local counsel to assist in bringing suit in an out-of-State court, the Commissioner, with the concurrence of the Attorney General, may employ such local counsel on the basis of a negotiated retainer or in accordance with prevailing commercial law league rates. (1939, c. 158, s. 939; 1963, c. 1169, s. 6.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, added the fourth sentence.

§ 105-269.3. Article applicable to gasoline and fuel taxes and gasoline and oil inspection fees.—The provisions of this article shall be applicable to taxes levied under subchapter V of chapter 105 of the General Statutes and to inspection fees levied under chapter 119 of the General Statutes. (1963, c. 1169, s. 6.)

Editor's Note.—The 1963 act adding this section became effective July 1, 1963.

SUBCHAPTER II. ASSESSMENT, LISTING AND COLLECTION OF TAXES.

Article 12.

State Board of Assessment.

§ 105-273. Creation; officers.—The Director of the Department of Tax Research, the Commissioner of Revenue, the chairman of the Public Utilities Commission and the Director of Local Government are hereby created the State Board of Assessment with all the powers and duties prescribed in the subchapter. The Commissioner of Revenue shall be the chairman of the said Board, and shall, in addition to presiding at the meetings of the Board, exercise the functions, duties, and powers of the Board when not in session. The Board may employ an executive secretary, whose entire time may be given to the work of the said Board, and is authorized to employ such clerical assistance as may be needed for the performance of its duties; all expenses of said Board shall be paid out of funds appropriated out of the general fund to the credit of the Department of Revenue of the State. (1939, c. 310, s. 200; 1941, c. 327, s. 6; 1947, c. 184; 1961, c. 547, s. 1.)

Editor's Note.—
The 1961 amendment deleted the words "the Attorney General" formerly appearing after "Commission" in line three.

§ 105-275. Duties of the Board.

Editor's Note.—
The word "of" in line 5 of subdivision (1) of this section in the replacement volume should read "or."

Applied in In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

Article 13.

Revaluation and Annual Assessment.

§ 105-278. Revaluation of real property.—In the following years and in every eighth year thereafter, as of January first of said years, as set out herein by divisions of counties, all real property shall be listed and assessed for ad valorem tax purposes:

Division One — 1961: Alamance, Edgecombe, Gates, Martin, Mitchell, Nash, Perquimans, Randolph, Stanly, and Warren.

Division Two—1962: Alexander, Anson, Clay, Craven, Duplin, Durham, and Granville.

Division Three—1963: Beaufort, Burke, Chatham, Davie, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, and Watauga.

Division Four — 1964: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Montgomery, Northampton, Wayne, and Wilkes.

Division Five—1965: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lee, Lenoir, Orange, Pamlico, Pitt, Richmond, Transylvania, and Washington.

Division Six—1966: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Madison, Pasquotank, Robeson, Rowan, and Swain.

Division Seven — 1967: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Polk, Stokes, Surry, Tyrrell, and Yadkin.

Division Eight — 1968: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Rutherford, Union, Vance, Wake, Wilson, and Yancey.

Any county desiring to conduct a real property revaluation earlier than called for under the schedule provided in this section may do so upon adoption by the board of county commissioners of a resolution so providing, a copy of such resolution to be sent forthwith to the State Board of Assessment. Once the initial re-

valuation date has been established for a given county, either under the schedule provided in this section, or by action of the board of county commissioners as herein provided, that county shall continue to hold revaluations each eighth year thereafter unless, in accordance with the procedure herein provided, an earlier date for revaluation shall be set, in which event a new schedule of octennial revaluations shall thereby be established for such county. Revaluations held or to be held in any counties as of January 1, 1960 or 1961 are validated.

Real property shall be appraised in such revaluation years by actual appraisal as provided in G. S. 105-295 and assessed in accordance with the provisions of G. S. 105-294. (1939, c. 310, s. 300; 1941, c. 282, ss. 1, 1½; 1943, c. 634, s. 1; 1945, c. 5; 1947, c. 50; 1949, c. 109; 1951, c. 847; 1953, c. 395; 1955, c. 1273; 1957, c. 1453, s. 1; 1959, c. 704, s. 1.)

Local Modification.—Alamance: 1959, c. 264; Burke: 1959, c. 602; Columbus: 1959, c. 23; Hertford: 1959, c. 233; Iredell: 1959, c. 67; Johnston: 1959, c. 69; Lee: 1959, c. 803; Martin: 1959, c. 303; Pasquotank: 1959, c. 71; Wilkes: 1959, c. 611.

Editor's Note.—

The 1959 amendment, effective as of Jan. 1, 1960, rewrote this section.

Session Laws 1959, c. 704, s. 7, provides: "Notwithstanding any express repeal contained in this act or any repeal implied from its terms and provisions, the existing laws of the State relating to ad valorem taxation shall be and continue in full force and effect with respect to all acts and transactions done or occurring prior to January 1, 1960, affected or which ought to be affected by their terms and provisions, and with respect to all liabilities, criminal as well as civil, incurred or which ought to have been incurred with respect to such acts and transactions done or occurring prior to January 1, 1960."

Quoted in DeLoatch v. Beamon, 252 N. C. 754, 114 S. E. (2d) 711 (1960).

§ 105-279. **Listing and assessing in years other than revaluation years.**—In the year 1960, and in other than revaluation years, all property, real and personal, subject to taxation, shall be listed for ad valorem tax purposes. Real property not subject to reassessment in such years shall be listed at the value at which it was assessed at the last revaluation. In all such years the following property shall be assessed or reassessed:

(1) All personal property (which for purposes of taxation shall include all personal property whatsoever, tangible or intangible, except personal property expressly exempted by law).

(2) All machinery, service station equipment, merchandise and trade fixtures, barbershop equipment, meat market equipment, restaurant and cafe fixtures, drugstore equipment and similar property not permanently affixed to the real estate.

(3) All real property (which for purposes of taxation shall include all lands within the State and all buildings and fixtures thereon and appurtenances thereto) which:

a. Was not assessed at the last revaluation conducted in accordance with the provisions of G. S. 105-278.

b. Has increased in value to the extent of more than one hundred dollars ($100.00) by virtue of improvements or appurtenances (other than those listed in G. S. 105-294) added since the last assessment of such property.

c. Has decreased in value to the extent of more than one hundred dollars ($100.00) by virtue of improvements or appurtenances (other than those listed in G. S. 105-294) damaged, destroyed, or removed since the last assessment of such property.

d. Has increased or decreased in value to the extent of more than one hundred dollars ($100.00) by virtue of circumstances other than general economic increases or decreases since the last assessment of such property. In each such case the facts in connection with the increase or decrease in value of the

specific tract, parcel, or lot shall be found by the Board of Equalization and entered upon the proceedings of said Board.

e. Has increased or decreased in value because of a change in the acreage allotment for any farm commodity, when any such commodity acreage allotment was assigned a fixed value per acre in the last revaluation of real property. In such event the county board of equalization and review is hereby authorized to adjust uniformly the assessed valuations of farm properties affected by such change in the acreage allotment.

f. Has been subdivided into lots located on streets already laid out and open for travel, and sold or offered for sale as lots, since the date of the last assessment of such property. Provided, that where lands have been subdivided into lots, and more than five acres of any such subdivision remain unsold by the owner thereof, the unsold portion may be listed as land acreage in the discretion of the tax supervisor. The provisions of this subsection shall apply to all cases of subdivision into lots, regardless of whether the land is situated within or without an incorporated municipality.

g. Was last assessed at an improper figure as the result of a clerical error.

h. Was last assessed at an improper figure as the result of an error in the listing of the number of acres in the tract or parcel or in the listing of the dimensions of the lot. In each such case the facts in connection with the error shall be found by the Board of Equalization and entered upon the proceedings of said Board.

i. Was last assessed at a figure which (when compared with the assessment placed upon similar property in the county) was manifestly unjust at the time so assessed: Provided, that the power to reassess under this subdivision shall be exercised only by the Board of Equalization and Review, subject to appeal to the State Board of Assessment; provided, further, that no reassessment under the powers granted by this section shall be retroactive beyond the current year. (1939, c. 310, s. 301; 1955, c. 901; 1959, c. 704, s. 2; 1963, c. 414.)

Cross Reference. — See Editor's Note under § 105-278.

Editor's Note.—

The 1959 amendment, effective as of Jan. 1, 1960, rewrote the first two sentences of the introductory paragraph, and paragraph "a" of subdivision (3).

The 1963 amendment redesignated paragraphs e through h as f through i and inserted new paragraph e in subdivision (3).

Correction of Unjust and Inequitable Assessment.—When this section is read and considered, as it must be, with § 105-295, it is apparent that the legislature intended to authorize county board of equalization and review, when requested so to do, to correct any unjust and inequitable assessment. In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

If the county board of equalization and review refuses to act the taxpayer may appeal to the State Board of Assessment. In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

The legislature never contemplated that an injustice done a taxpayer must continue for a period of years merely because he failed at the first opportunity to bring the injustice to the attention of the authority having the power to correct. In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

§ 105-280. Date as of which assessment is to be made.

Applied in Kirkman Furniture Co. v. Herman, 258 N. C. 733, 129 S. E. (2d) 471 (1963).

§ 105-281. Property subject to taxation.—All property, real and personal, within the jurisdiction of the State, not especially exempted, shall be subject to taxation.

Cotton, tobacco, other farm products, goods, wares, and merchandise which are held or stored for shipment to any foreign country, or held or stored at a seaport terminal awaiting further shipment after being imported from a foreign country through any seaport terminal in North Carolina, except any such products, goods, wares, and merchandise which have been so stored for more than twelve months on the date as of which property is assessed for taxation, are hereby designated a special class of personal property and shall not be assessed for taxation. It is hereby declared to be the policy of this State to use its system of property taxation in such manner, through the classification of the aforementioned property, as to encourage the development of the ports of North Carolina. For purposes of this section and of this subchapter, the term "property, real and personal," as used in the first paragraph of this section, shall not include the property hereinabove in this paragraph so specially classified. (1939, c. 310, s. 303; 1961, c. 1169, s. 8.)

Editor's Note.—

Session Laws 1961, c. 1169, s. 8, which added the second paragraph of this section also proposed amendments to §§ 3 and 5 of article 5 of the Constitution. The act provided that the amendment to this section shall become effective upon the adoption of the proposed amendments at the next general election. The amendments were adopted by vote of the people at the general election held November 6, 1962.

Article 14.

Personnel for County Tax Listing and Assessing.

§ 105-286. Powers and duties of tax supervisor.

(f) He may require that any or all persons, firms and corporations, domestic and foreign, engaged in operating any business enterprise in the county shall submit, in connection with his or its regular tax list, a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery of valuation of property taxable in the county. Inventories, statements of assets and liabilities or other information not expressly required by this subchapter to be shown on the tax list itself, secured by the supervisor under the terms of this subsection, shall not be open to public inspection.

Any supervisor or other official disclosing information so obtained, except as such disclosure may be necessary in listing or assessing property or in administrative or judicial proceedings relating to such listing or assessing, shall be guilty of a misdemeanor and punishable by fine not exceeding fifty dollars ($50.00), except that representatives of the North Carolina Department of Revenue shall upon request of the Commissioner of Revenue, be allowed to examine such detailed inventories, statements of assets and liabilities, or similar information furnished by the taxpayers; provided, it shall be unlawful for the representatives or any agent or employee of the North Carolina Department of Revenue to divulge such information in any way as to identify any particular taxpayer, and the provisions of G. S. 105-259 shall apply.

(1963, c. 302.)

Editor's Note.—

The 1963 amendment, effective Jan. 1, 1964, added all that part of the second paragraph of subsection (f) following the words and figures "fifty dollars ($50.00)." As only subsection (f) was changed by the amendment the rest of the section is not set out.

§ 105-287. Appointment, qualifications, and number of list takers and assessors.—Subject to the approval of the county commissioners, the supervisor, on or before the second Monday preceding the date as of which property is to be assessed, shall appoint some competent person to act as list taker

and assessor in each township. With the approval of the commissioners the supervisor may appoint more than one such person for any township. If more than one list taker is appointed for a township, the supervisor, with the approval of the county commissioners, shall have power to allocate responsibility for tax listing and assessment between or among the list takers for that township as he deems most effective. In revaluation years three such persons shall be appointed in each township, and more than three may be appointed in townships in which is located an incorporated town or part of an incorporated town; and in such years, at the time of their appointment, such appointees shall have been residents of the county for at least twelve months: Provided, that in any county making horizontal adjustments in real property appraisals as provided in G. S. 105-294, the commissioners may appoint fewer than three list takers and assessors per township: Provided, further, that in revaluation years the board of county commissioners may appoint one list taker and assessor in each township if in addition thereto at least two county-wide list takers and assessors are appointed; or said board may appoint not more than three qualified assessors to assess all real estate in the county. In every year the persons appointed shall be persons of character and integrity, and shall have such experience in the valuation of types of property commonly owned in the county as shall satisfy the supervisor and the commissioners. (1939, c. 310, s. 404; 1953, c. 970, s. 3; 1955, c. 1012, s. 1; 1959, c. 704, s. 3.)

Local Modification. — Avery: 1961, c 254; Henderson: 1959, c. 104; Mecklenburg: 1961, c. 246.

Cross Reference. — See Editor's Note under § 105-278.

Editor's Note.—

The 1959 amendment, effective as of Jan. 1, 1960, substituted "revaluation" for "quadrennial" in line nine and in the second proviso. It also rewrote the first proviso.

Cited in DeLoatch v. Beamon, 252 N. C. 754, 114 S. E. (2d) 711 (1960).

§ 105-291. Employment of experts.

Quoted in DeLoatch v. Beamon, 252 N. C. 754, 114 S. E. (2d) 711 (1960).

§ 105-292. Assistant tax supervisors and clerical assistants.—The board of county commissioners may, in their discretion, upon the recommendation of the tax supervisor, appoint one or more assistant tax supervisors and employ such clerical assistants to the tax supervisor as they deem proper. The board of county commissioners may delegate to assistant tax supervisors appointed under this section responsibility for real property appraisal, the listing and appraisal of business property, or such other duties as they deem advisable. Clerical assistants shall perform such duties as may be assigned them by the tax supervisor. Assistant tax supervisors and clerical assistants shall be appointed or employed and compensated for such terms as the county commissioners deem proper.

The provisions of this section shall not apply to the following counties: Alleghany, Ashe, Avery, Caldwell, Catawba, Cherokee, Duplin, Franklin, Granville, Halifax, Hoke, McDowell, Martin, Perquimans, Randolph, Transylvania, and Watauga. (1939, c. 310, s. 409; 1955, c. 866; 1963, c. 625.)

Editor's Note.—

The 1963 amendment deleted "Buncombe" from the list of counties in the second paragraph.

Article 15.

Classification, Valuation and Taxation of Property.

§ 105-294. Taxes to be on uniform assessment basis as to class.—All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. The intent and purpose of this section is to have all property and subjects of taxation appraised at their true and actual value in

money, in such manner as such property and subjects of taxation are usually sold, but not by forced sale thereof; and the words "market value", "true value", or "cash value", whenever used in this chapter, shall be held to mean for the amount of cash or receivables the property and subjects can be transmuted into when sold in such manner as such property and subjects are usually sold.

In the year in which a revaluation of real property, conducted in a county under the provisions of G. S. 105-278, is to take effect, and annually thereafter, the board of county commissioners shall select and adopt some uniform percentage of the amount at which property has been appraised as the value to be used in taxing property. The percentage selected shall be adopted by resolution of the board of county commissioners prior to the first meeting of the board of equalization and review, and such percentage shall be known as the assessment ratio. Before the adoption of the resolution, representatives of municipalities and other taxing authorities required by this section to use the assessments determined by the board of county commissioners shall be given an opportunity to make recommendations as to that assessment ratio which would provide a reasonable and adequate tax base in each such municipality or other taxing unit. The board shall give due consideration to any recommendation so made, but final action selecting and adopting the assessment ratio shall be taken by the board. Within ten days after adopting its assessment ratio, the board of county commissioners shall forward a certified copy of the adoption resolution to the State Board of Assessment.

The percentage or assessment ratio selected shall be applied to the appraised value of all real and personal property subject to assessment in the county. The tax records of the county shall show for all property both the appraisal value and the assessed value for tax purposes. Taxes levied by all counties, municipalities, and other local taxing authorities shall be levied uniformly on assessments so determined.

In the fourth year following revaluation of real property by actual appraisal as required by G. S. 105-278, each county shall review its appraisal values and make whatever revisions are needed to bring them into line with current market or cash value, such revisions to be made horizontally only, by uniform percentages of increase or reduction rather than by actual appraisal and reassessment of individual properties. To the appraisal values thus revised, each county shall, for tax assessment purposes, apply the assessment ratio selected and adopted as hereinabove provided.

It is hereby declared to be the policy of this State so to use its system of real estate taxation as to encourage the conservation of natural resources and the beautification of homes and roadsides, and all tax assessors are hereby instructed that in assessing real estate under the provisions of G. S. 105-279 they shall make no increase in the tax valuation of real estate as a result of the owner's enterprise in adopting any one or more of the following progressive policies:

(1) Planting and care of lawns, shade trees, shrubs and flowers for noncommercial purposes.
(2) Repainting buildings.
(3) Terracing or other methods of soil conservation, to the extent that they preserve values already existing.
(4) Protection of forests against fire.
(5) Planting of forest trees on vacant land for reforestation purposes (for ten years after such planting).

It is hereby declared to be the policy of this State to use its system of real estate taxation in such manner as to encourage the conservation of natural resources and the abatement and prevention of water pollution, and all tax assessors are hereby instructed that in assessing real estate under the provisions of G. S. 105-279 they shall make no increase in the tax valuation of real estate as the result of the owner's enterprise in installing or constructing waste disposal or water

pollution abatement plants, including waste lagoons, or equipment, upon the condition that a certificate is furnished to the tax supervisor of the county, wherein such property is located, by the State Stream Sanitation Committee, certifying that said Committee has found as a fact that the waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of said Committee with respect to such plants or equipment, that such plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the State Stream Sanitation Committee, and that the primary purpose thereof is to reduce water pollution resulting from the discharge of sewage and waste and not merely incidental to other purposes and functions. (1939, c. 310, s. 500; 1953, c. 970, s. 5; 1955, c. 1100, s. 2; 1959, c. 682.)

Local Modification.—Polk: 1963, c. 751.

Editor's Note.—

The 1959 amendment, effective as of Jan. 1, 1960, rewrote the first paragraph and inserted the second, third and fourth paragraphs.

Cited in DeLoatch v. Beamon, 252 N. C. 754, 114 S. E. (2d) 711 (1960).

§ 105-294.1. Agricultural products in storage. — Any agricultural product held in North Carolina by any manufacturer or processor for manufacturing or processing, which agricultural product is of such nature as customarily to require storage and processing for periods of more than one year in order to age or condition such product for manufacture, is hereby classified as a special class of property under authority of § 3, article V of the Constitution. Such agricultural products so classified shall be taxed uniformly as a class in each local taxing unit at sixty per cent (60%) of the rate levied for all purposes upon real estate and other tangible personal property by said taxing unit in which such agricultural product is listed for taxation. (1947, c. 1026; 1961, c. 1169, s. 6.)

Local Modification.—Lenoir: 1961, c. 1090.

Editor's Note.—

The 1961 act rewriting this section also proposed amendments to §§ 3 and 5 of article 5 of the Constitution. The act provides that the amendment of this section shall become effective only upon the adoption of the proposed amendments. The amendments were adopted by vote of the people at the general election held November 6, 1962.

§ 105-294.2. Peanuts; year following year in which grown.—Peanuts held in North Carolina in the year following the year in which such peanuts are grown are hereby classified as a special class of property under authority of § 3, article V of the Constitution. Such peanuts so classified shall be taxed uniformly as a class in each local taxing unit at twenty per cent (20%) of the rate levied for all purposes upon real estate and other tangible personal property by said taxing unit in which such peanuts are listed for taxation. (1955, c. 697, s. 1; 1961, c. 1169, s. 7.)

Editor's Note.—The 1961 act rewriting this section also proposed amendments to §§ 3 and 5 of article 5 of the Constitution. The act provides that the amendment of this section shall become effective only upon the adoption of the proposed amendments. The amendments were adopted by vote of the people at the general election held November 6, 1962.

§ 105-294.3. Baled cotton for manufacture or processing in State. —Cotton in bales held for manufacture or processing in North Carolina is hereby classified as a special class of property under authority of § 3, article V of the Constitution. Such cotton so classified shall be taxed uniformly as a class in each local taxing unit at fifty per cent (50%) of the rate levied for all purposes upon real estate and other tangible personal property by said taxing unit in which such cotton is listed for taxation. This classification shall not be held to repeal

any other classification or exemption granted to cotton under any existing law of State-wide application. (1961, c. 1169, s. 7½.)

Editor's Note.—The 1961 act which added this section also proposed amendments to §§ 3 and 5 of article 5 of the Constitution. The act provides that this section shall become effective only upon the adoption of the proposed amendments. The amendments were adopted by vote of the people at the general election held November 6, 1962.

§ 105-294.4. Individual family fallout shelters.—Individual family fallout shelters meeting the criteria and standards of the Office of Civil Defense, United States Department of Defense, when constructed to protect an individual family from radioactive fallout, are hereby classified as a special class of property under authority of § 3, article V of the Constitution. Such fallout shelters shall be subject to taxation in each local taxing unit only to the extent that the appraised value of such shelter, separate and apart from any structure to which the shelter is attached or within which the shelter is constructed, exceeds two thousand dollars ($2,000.00). Where two or more families join in the construction of such a shelter for their common use, an exclusion of two thousand dollars ($2,000.00) shall be allowed from the total appraised value for each such family. (1963, c. 940.)

Editor's Note.—The act inserting this section is made effective as of January 1, 1964, for taxes listed as of January 1, 1964, and the years thereafter.

§ 105-295. Appraisal of real property; land and buildings.—In appraising real property for tax purposes as required by G. S. 105-278, G. S. 105-279, and G. S. 105-294, it shall be the duty of the county tax supervisor to see that every lot, parcel, tract, building, structure, and other improvement being appraised actually be visited and observed by a competent appraiser, either one appointed under the provisions of G. S. 105-287 or one employed under the provisions of G. S. 105-291. It shall also be the duty of the county tax supervisor to provide for the development and compilation of standard uniform schedules of values to be used in appraising real property in the county. Such schedules shall be prepared prior to each revaluation as required by G. S. 105-278, shall be in written or printed form, and shall be prepared in sufficient detail to enable appraisers to adhere to them in appraising the kinds of real property commonly found in the county. The schedules of values so developed shall be made available for public inspection upon request.

In determining the value of land the assessors shall consider as to each tract, parcel or lot separately listed at least its advantages as to location, quality of soil, quantity and quality of timber, water power, water privileges, mineral or quarry or other valuable deposits, fertility, adaptability for agricultural, commercial or industrial uses, the past income therefrom, its probable future income, the present assessed valuation, and any other factors which may affect its value.

In determining the value of a building the assessors shall consider at least its location, type of construction, age, replacement, cost, adaptability for residence, commercial or industrial uses, the past income therefrom, the probable future income, the present assessed value, and any other factors which may affect its value. Buildings partially completed shall be assessed in accordance with the degree of completion on the day as of which property is assessed.

For each tract, parcel, lot or group of contiguous lots a separate property record shall be prepared. Said record shall be designed to show the information required for compliance with the provisions of G. S. 105-306 dealing with real property as well as that required for compliance with the provisions of this section. The intent and purpose of this section is to require that individual property records be maintained in sufficient detail to enable property owners to ascertain the method and standards of value by which properties are valued. (1939, c. 310, s. 501; 1959, c. 704, s. 4.)

Cross References. — See Editor's Note under § 105-278. As to correction of unjust and inequitable assessments, see note to § 105-279.

Editor's Note. — The 1959 amendment, effective as of Jan. 1, 1960, added "Appraisal of real property" to the caption, and added the first and fourth paragraphs.

Net income produced is an element which may properly be considered in determining value, but it is only one element. In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

But Fact-Finding Board May Also Consider Earning Capacity.—If it appears that the income actually received is less than the fair earning capacity of the property, the earning capacity should be substituted as a factor rather than the actual earnings. The fact-finding board can properly consider both. In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

In this section, "the past income therefrom, its probable future income," is not necessarily actual income. The language is sufficient to include the income which could be obtained by the proper and efficient use of the property. In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

Quoted in DeLoatch v. Beamon, 252 N. C. 754, 114 S. E. (2d) 711 (1960).

Article 16.

Exemptions and Deductions.

§ 105-296. Real property exempt.

(3) Buildings, with the land upon which they are situated, lawfully owned and held by churches or religious bodies, wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body or occupied gratuitously by one other than the owner which if it were the owner, would qualify for the exemption under this section, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(4) Buildings, with the land occupied, wholly devoted to educational purposes, belonging to and exclusively occupied and used by public libraries, museums, colleges, academies, industrial schools, seminaries, and any other institutions of learning, together with such additional land owned by such libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, and also such other buildings and facilities located on the premises of such institutions as may be reasonably necessary and useful in the functional operation of such institutions: Provided, however, that the exemption of this subdivision shall not apply to any institution organized or operated for profit, or if any officer, shareholder, member, or employee thereof or other individual shall be entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services.

(12) Buildings with the land upon which they are situated, together with the additional adjacent land reasonably necessary for the convenient use of such buildings, lawfully owned and held by churches or other religious bodies or organizations, and used for the general or promotional offices or headquarters of such churches or religious bodies or organizations.

(13) Notwithstanding any of the other provisions of this section, when any building and additional adjacent land necessary for the convenient use of said building belongs to an organization enumerated in subdivisions (3) through (7) or (10) or (12) of this section and a part thereof is devoted to the purposes for which an exemption from ad valorem taxes would be allowed by said subdivisions if the entire building and grounds were exclusively used for such purposes, then

such property shall be exempt from ad valorem taxes to the extent of that pro rata part so used. (1939, c. 310, s. 600; 1941, c. 125, ss. 1, 2; 1943, c. 634, s. 2; 1945, c. 995, s. 2; 1955, c. 230, s. 1; c. 1100, s. 2; 1959, cc. 511, 521; 1961, c. 953.)

Editor's Note.—

The first 1959 amendment added subdivisions (12) and (13), and provided that it shall be in full force and effect beginning with the taxes which fall due on the first Monday in October, 1959, and thereafter. The second 1959 amendment rewrote subdivision (4).

The 1961 amendment inserted in subdivision (3) following the word "body" in line four the words "or occupied gratuitously by one other than the owner which if it were the owner, would qualify for the exemption under this section."

Only the subdivisions mentioned are set out.

Construction of Section. — Statutes exempting specific property from taxation because of the purposes for which such property is held and used, are and should be construed strictly, when there is room for construction, against exemption and in favor of taxation. However, it is not meant that the statute shall be stintingly or even narrowly construed, but it does mean that everything shall be excluded from its operation which does not clearly come within the scope of the language used. Southeastern Baptist Theological Seminary, Inc. v. Wake County, 251 N. C. 775, 112 S. E. (2d) 528 (1960).

The words of subdivision (4) of this section, given their ordinary meaning, are clear and require no construction. Southeastern Baptist Theological Seminary, Inc. v. Wake County, 251 N. C. 775, 112 S. E. (2d) 528 (1960).

Institution Does Not Become Agency of State by Reason of Exemption.—It cannot be said that a purely local church, school or hospital becomes an instrumentality of the State, and subject to its control, by simply having its property exempt from ad valorem taxes. Simkins v. Moses H. Cone Memorial Hospital, 211 F. Supp. 628 (1962).

Cited in Petition of Vanderbilt University, 252 N. C. 743, 114 S. E. (2d) 655 (1960).

§ **105-296.1. Timberland owned by State.**—Any State department or agency owning timberland or leasing, controlling or administering timberland owned by the State, shall pay to each county in which said timberland is situated an amount equal to fifteen per cent (15%) of proceeds of the gross sales of trees, timber, pulpwood, and any forest products from said timberland, and said funds shall, when received, be placed in the account of the county general fund. Where the said timberland consists of a tract situated in more than one county and the timber, trees, pulpwood, or forest products are sold, or cut, removed and sold from the entire tract, then the percentage of gross sales as herein prescribed shall be divided and paid to said county boards on the basis of the acreage located in the respective counties: Provided, this section shall not apply to the proceeds of sale of trees, timber, pulpwood, or forest products paid to or received by the State Board of Education, or any other State educational institution, or the North Carolina Department of Agriculture from its research stations and experimental farm lands: provided, further, that where State forests are held, leased, or administered by the Prison Department, or as held, leased or administered by the Department of Conservation and Development as provided by G. S. 113-34, or by the Wildlife Resources Commission, said departments, instead of payment as above prescribed, may elect permanently to subject such State forests to county taxes assessed on the same basis as are private lands, and pay said taxes from the proceeds of revenue received and collected by said departments to the board of county commissioners of the county in which said forest is situated, but all fire towers, buildings and all other permanent improvements shall be exempt from assessment. Provided that the provisions of this section shall not apply to lands under the control of The Hospitals Board of Control. (1957, c. 988, s. 1; 1963, c. 1120.)

Editor's Note.—

The 1963 amendment substituted "fifteen per cent (15%)" for "ten per cent (10%)" near the beginning of this section and inserted the words "or by the Wildlife Resources Commission" in the second proviso.

§ 105-297. Personal property exempt.

(10), (14), (17): Repealed by Session Laws 1961, c. 1169, s. 8.

(18) Wheat grown in North Carolina and stored in an unmanufactured state, owned or held by one other than a processor of wheat, upon which there is money borrowed and said money borrowed being secured by a mortgage on said wheat, shall be exempt for the year following the year in which grown. (1939, c. 310, s. 601; 1941, c. 125, ss. 3, 4; c. 221, s. 2; 1945, c. 995, s. 3; 1949, cc. 132, 1268; 1955, c. 230, s. 2; c. 1069, s. 1; c. 1100, s. 2; c. 1356; 1961, c. 1169, ss. 8, 8½.)

Editor's Note.—

Session Laws 1961, c. 1169, ss. 8 and 8½ which repealed subdivisions (10), (14) and (17), and added subdivision (18), also proposed amendments to §§ 3 and 5 of article 5 of the Constitution. The act provided that the repeal of the subdivisions listed and the addition of subdivision (18) shall become effective only upon the adoption of the proposed amendments. The amendments were adopted by vote of the people at the general election held November 6, 1962.

Only the reference to the repealed subdivisions and the added subdivision are set out.

For comment on the second and fourth 1955 amendments, see 33 N. C. Law Rev. 581-583.

Institution Does Not Become Agency of State by Reason of Exemption.—See note to § 105-296.

Article 17.

Real Property, Where and in Whose Name Listed.

§ 105-301. In whose name real property to be listed; information regarding ownership; permanent listing.

Quoted in Cordell v. Grove Stone & Sand Co., 247 N. C. 688, 102 S. E. (2d) 138 (1958).

Article 18.

Personal Property, Where and in Whose Name Listed.

§ 105-302. Place for listing tangible personal property.

Editor's Note.—

For note on ad valorem taxation of flight equipment of interstate airlines, see 33 N. C. Law Rev. 306.

Article 19.

What the Tax List Shall Contain and Miscellaneous Matters Affecting Listing.

§ 105-311. Length of the listing period; preliminary work.

Local Modification.—Rockingham: 1959, c. 598, effective Jan. 1, 1960.

§ 105-312. Records of tax exempt property.—The person making up the tax records shall enter, in regular order, the name of the owner, a clear description of all real and personal property exempt from taxation, together with a statement of its value, for what purpose used, and the rent, if any, obtained therefrom. Each list taker shall secure the necessary information with respect to such property in his township. The county supervisor of taxation, when the list of exempt property is completed, shall make duplicate copies thereof and transmit a duplicate copy to the State Board of Assessment on or before November 1 of each year and shall file the original list in his office. (1939, c. 310, s. 906; 1963, c. 515.)

Editor's Note. — The 1963 amendment rewrote the last sentence of this section.

Article 21.

Procedure Subsequent to the Close of the Tax Listing Period.

§ 105-323. Making up the tax records.—(a) The list takers for their respective townships, or such other persons as the commissioners may designate, shall make out, on forms approved by the State Board of Assessment, tax records which may consist of a scroll designed primarily to show tax valuations and a tax book designed primarily to show the amount of taxes or may consist of one record designated to show both valuations and taxes. Such records for each township shall be divided into four parts:

(1) White individual taxpayers (including lists filed by corporate fiduciaries for white individual beneficiaries);

(2) Colored individual taxpayers (including lists filed by corporate fiduciaries for colored individual beneficiaries);

(3) Indian individual taxpayers (including lists filed by corporate fiduciaries for Indian individual beneficiaries); and

(4) Corporations, partnerships, business firms and unincorporated associations.

(b) In lieu of dividing the tax records by township and by the four parts as set forth in subsection (a) above, the tax supervisor, with the approval of the board of county commissioners, may direct the list takers, or other persons designated to make out the tax records, to make out the tax scroll and tax book in such other order as may more conveniently contribute to the development of tax information.

(c) Such records shall show at least the following information:

(1) The name of each person whose property is listed and assessed for taxation, entered in alphabetical order.

(2) The amount of valuation of real property assessed for county-wide purposes (divided into as many classes as the State Board may prescribe).

(3) The amount of valuation of personal property assessed for county-wide purposes (divided into as many classes as the State Board may prescribe).

(4) The total amount of real and personal property valuation assessed for county-wide purposes.

(5) The amount of ad valorem tax due by each taxpayer for county-wide purposes.

(6) The amount of poll tax due by each taxpayer.

(7) The amount of dog tax due by each taxpayer.

(8) The amount of valuation of property assessed in any special district or subdivision of the county for taxation.

(9) The amount of tax due by each taxpayer to any special district or subdivision of the county.

(10) The total amount of tax due by the taxpayer to the county and to any special district, subdivision or subdivisions of the county.

(d) All changes in valuations affected between the close of the listing period and the meeting of the board of equalization and review shall be reflected on such records, and so much of such records as may have been prepared shall be submitted to the board at its meetings. Changes made by said board shall also be reflected upon such records, either by correction, rebate or additional charge. (1939, c. 310, s. 1101; 1963, c. 784, s. 1.)

Editor's Note. — The 1963 amendment inserted present subsection (b) and redesignated former subsections (b) and (c) as present subsections (c) and (d).

§ 105-324. Tax receipts and stubs.

(5) The rate of tax levied for each county-wide purpose, the total rate for all county-wide purposes, and the rate levied for any special district or subdivision of the county, which tax is charged to the taxpayer:

Provided, however, that in lieu of showing such information on the receipts and stubs, it may be furnished on a separate sheet of paper, properly identified, at the time the official receipt is delivered. (1961, c. 380.)

Editor's Note.—The 1961 amendment added the proviso to subdivision (5). As the rest of the section was not changed it is not set out.

§ 105-325. Disposition of tax records and receipts.

Applied in Kirkman Furniture Co. v. Herman, 258 N. C. 733, 129 S. E. (2d) 471 (1963).

§ 105-327. County board of equalization and review.

Local Modification.—Alamance, as to subsection (e): 1961, c. 556, amending 1959, c. 265; Burke, as to subsection (e): 1963, c. 957; Craven, as to subsection (e): 1963, c. 320; Guilford, as to subsection (e): 1963, c. 881; Harnett, as to subsection (e): 1963, c. 665.

Applied in In re Property of Pine Raleigh Corp., 258 N. C. 398, 128 S. E. (2d) 855 (1963).

Article 22.

Assessment Procedure of Cities and Towns.

§ 105-334. Cities and towns situated in more than one county.

Local Modification. — City of Rocky Mount: 1961, c. 786.

Editor's Note.—The words "or on" in line 7 of subdivision (1) of this section in the replacement volume should read "on or."

Article 23.

Reports to the State Board of Assessment and Local Government Commission.

§ 105-335. Report of valuation and taxes.—The clerk of the board of county commissioners, auditor, tax supervisor, tax clerk, county accountant or other officer performing such duties shall, at such time as the board may prescribe, return to the State Board of Assessment on forms prescribed by said Board an abstract of the real and personal property of the county, showing the number of acres of land and their value, the number of town lots and their value, the value of the several classes of livestock, the number of white and negro polls, separately, and specify every other subject of taxation and the amount of county tax payable on each subject and the amount payable on the whole. At the same time said clerk, auditor, supervisor or other officer shall return to the State Board of Assessment an abstract or list of the poll, county and school taxes payable in the county, setting forth separately the tax levied on each poll and on each hundred dollars' value of real and personal property for each purpose, and also the gross amount of every kind levied for county purposes, and such other and further information as the State Board of Assessment may require. (1939, c. 310, s. 1300; 1963, c. 784, s. 2.)

Editor's Note. — The 1963 amendment deleted the words "by townships" formerly appearing immediately after the word "county" near the middle of the first sentence.

Article 24.

Levy of Taxes and Penalties for Failure to Pay Taxes.

§ 105-340. Date as of which lien attaches.

Applied in Kirkman Furniture Co. v. Herman, 258 N. C. 733, 129 S. E. (2d) 471 (1963).

§ 105-345. Penalties and discounts for nonpayment of taxes.

Local Modification. — Subdivisions (1) and (6) shall not apply to municipalities in Bladen: 1961, c. 1033; Hoke: 1961, c. 147; Union: 1959, c. 334; Washington: 1959, c. 167; town of Cornelius: 1959, c. 844.

Editor's Note.—

Session Laws 1959, c. 131, made this section applicable to Macon County.

Session Laws 1961, c. 156, effective July 1, 1961, made this section applicable to Halifax County.

ARTICLE 27.

Collection and Foreclosure of Taxes.

§ 105-374. County sheriffs and tax collectors.

Cited in Barbour v. Goodman, 247 N. C. 655, 101 S. E. (2d) 696 (1958).

§ 105-376. The tax lien and discharge thereof.

Applied in Kirkman Furniture Co. v. Herman, 258 N. C. 733, 129 S. E. (2d) 471 (1963).

§ 105-378. Prepayments.

Designation of County Official to Collect Prepayments.—By its failure to designate specifically any county official to collect prepayments under this section, and by its instructions to the sheriff as to the manner of collecting taxes and the payment of commissions, and by its acquiescence in the manner in which commissions were paid to the sheriffs in the past years, a county board of commissioners in effect designated the sheriff as collector of prepayments of taxes under this section. Barbour v. Goodman, 247 N. C. 655, 101 S. E. (2d) 696 (1958).

§ 105-386. Collection of taxes outside the taxing unit. — If a taxpayer has no property in the taxing unit to which the taxes are due, but does have property in some other unit, or if the taxpayer has removed from the taxing unit in which the taxes are due and has left no property there and is known to be in some other unit in this State, it shall be the duty of the collector to send a copy of the tax receipt, with a certificate stating that such taxes are unpaid, to the collector of the unit in which such property is located or in which such taxpayer is known to be. No tax collector shall certify an unpaid tax bill to another unit after ten (10) years from the due date. Such receipt and certificate shall have the force and effect of a tax list of his own unit in the hands of the collector receiving it, and it shall be the duty of such collector to proceed immediately to collect such taxes by any means by which he could lawfully collect taxes of his own unit. The collector receiving such receipt and certificate shall report, within thirty days after such receipt, to the collector who sent the same, either that he has collected the same or is unable to collect the same by any lawful means or that he has begun proceedings for the collection of same. In acting on such receipt and certificate the receiving collector shall, in addition to collecting the amount of taxes certified as due, also collect a fee equal to ten per centum (10%) of the amount of taxes actually collected. All collections made under this section shall be remitted to the unit levying the tax within five days after such collection, but the collector making collection shall retain the prescribed collection fee for his personal use. All reports under this section, reporting that the tax is uncollectible, shall be under oath and shall state that the collector has used due diligence and is unable to collect said taxes by levy, garnishment or otherwise. Upon failure to make such sworn report the collector receiving such receipt and certificate shall be liable on his bond for such taxes.

It shall be the duty of the governing body of each taxing unit to require reports from the tax collector, at such times as it may prescribe (but not less frequently

than in connection with each annual settlement), concerning the efforts he has made to locate taxpayers who have removed from the unit, the efforts he has made to locate property in other units belonging to delinquent taxpayers, and the efforts he has made under this section to collect the taxes. (1939, c. 310, s. 1714; 1955, c. 909; 1963, c. 132.)

Editor's Note.—
The 1963 amendment inserted the second sentence.

§ 105-387. Sales of tax liens on real property for failure to pay taxes.

Local Modification. — City of Greensboro: 1959, c. 1137, s. 17.

Applied in Barbour v. Goodman, 247 N. C. 655, 101 S. E. (2d) 696 (1958).

Cited in Edwards v. Arnold, 250 N. C. 500, 109 S. E. (2d) 205 (1959).

§ 105-391. Foreclosure of tax liens by action in nature of action to foreclose a mortgage.

Local Modification.—Dare, as to subsection (k): 1963, c. 152.

Cited in Edwards v. Arnold, 250 N. C. 500, 109 S. E. (2d) 205 (1959).

§ 105-392. Alternative method of foreclosure.

Local Modification.—Chowan (any political subdivision or incorporated town therein): 1959, c. 16.

Tenancy by Entireties.—Where tax foreclosure proceedings under this section are instituted in regard to land held by husband and wife by the entireties, but the proceedings are solely against the husband without notice to the wife, the tax sale on the certificate-judgment is wholly ineffectual, since the wife is not bound thereby and the husband has no divisible interest in the property which is subject to execution. Edwards v. Arnold, 250 N. C. 500, 109 S. E. (2d) 205 (1959).

§ 105-393. Time for contesting validity of tax foreclosure title.

Cited in Edwards v. Arnold, 250 N. C. 500, 109 S. E. (2d) 205 (1959).

SUBCHAPTER III. COLLECTION OF TAXES.

Article 30.

General Provisions.

§ 105-403. No taxes released.

Local Modification. — Town of Angier in Harnett County: 1959, c. 461.

§ 105-405: Repealed by Session Laws 1963, c. 548.

§ 105-405.1. Governing boards of counties, cities and towns authorized to refund taxes illegally collected.

Local Modification. — Cumberland and city of Fayetteville: 1959, c. 676.

§ 105-406. Remedy of taxpayer for unauthorized tax.

This section is constitutional.

In accord with original. See Kirkpatrick v. Currie, 250 N. C. 213, 108 S. E. (2d) 209 (1959).

When Injunction Will Lie.—The remedy of injunction is available to a taxpayer when a tax levy or assessment, or some part thereof, is challenged on the ground (1) the tax or assessment is itself illegal or invalid, or (2) for an illegal or unauthorized purpose. Wynn v. Trustees of Charlotte Community College System, 255 N. C. 594, 122 S. E. (2d) 404 (1961).

ARTICLE 32.

Tax Liens.

§ 105-414. Tax lien enforced by action to foreclose.

Necessary Parties.—In an action to enforce the lien for taxes under this section, each person having an estate in the land is a necessary party if his equity of redemption is to be barred, and where at the time of the institution of the proceeding the persons named in the summons and complaint as owners of the land are dead, and their heirs or devisees are not made parties, judgment of foreclosure and sale of the land thereunder cannot divest the title of the heirs or devisees. Page v. Miller, 252 N. C. 23, 113 S. E. (2d) 52 (1960).

ARTICLE 34.

Tax Sales.

Part 2. Refund of Tax Sales Certificates.

§ 105-422. Tax liens barred. — No action shall be maintained by any county or municipality to enforce any remedy provided by law for the collection of taxes or the enforcement of any tax liens held by counties and municipalities, whether such taxes or tax liens are evidenced by the original tax books or tax sales certificates or otherwise, unless such action shall be instituted within ten years from the time such taxes became due: Provided, that as to tax foreclosure actions which under existing laws are not and will not be barred prior to December 31st, 1948, foreclosure actions may be instituted thereon at any time prior to December 31st, 1948: Provided, further, that this section shall not be construed as applying to the liens for street and/or sidewalk improvements; and provided further, that this section shall not be applicable to any pending tax foreclosure actions. Provided that the provisions of this section shall not apply to Ashe, Buncombe, Burke, Camden, Clay, Columbus, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Lenior, Macon, Madison, McDowell, Moore, Nash, New Hanover, Orange, Pamlico, Pender, Rockingham, Sampson, Scotland, Stokes, Vance, Wayne, Wilkes and Wilson counties or any of the political subdivisions thereof. (1933, c. 181, s. 7; c. 399; 1947, c. 1065, s. 1; 1949, cc. 60, 735; 1951, cc. 71, 306, 572; 1953, cc. 381, 427, 538, 645, 656, 752, 775, 1008, 1055, c. 1087; 1957, cc. 53, 678, 1123; 1959, c. 608; 1961, cc. 542, 695, 885.)

Local Modification.—Town of Beaufort: 1963, c. 892.

Editor's Note.—

The 1959 amendment inserted "Stokes" in the list of counties.

Session Laws 1959, c. 373, effective Jan. 1, 1961, provides for striking out "Burke" from the list of counties and substituting in lieu thereof the words "municipalities in Burke County."

The first 1961 amendment, effective June 30, 1961, deleted "Davie" from the list of counties.

The second 1961 amendment, effective July 1, 1963, deleted "Carteret" from the list of counties so as to make the section applicable to the county and its political subdivisions.

The third 1961 amendment, effective July 1, 1962, deleted Iredell from the list of counties.

ARTICLE 35.

Sheriff's Settlement of Taxes.

§ 105-424. Time and manner of settlement.

Local Modification. — Hyde: 1959, c. 979.

Applied in Barbour v. Goodman, 247 N. C. 655, 101 S. E. (2d) 696 (1958).

SUBCHAPTER IV. LISTING OF AUTOMOBILES.

Article 35A.

Listing of Automobiles in Certain Counties.

§ 105-429. Counties to which article applicable.—This article shall apply to the following counties: Alamance, Beaufort, Buncombe, Cabarrus, Camden, Caswell, Chowan, Clay, Cleveland, Columbus, Currituck, Duplin, Durham, Gates, Guilford, Halifax, Harnett, Henderson, Hertford, Iredell, Johnston, Lee, McDowell, Moore, Nash, Orange, Pasquotank, Perquimans, Pitt, Polk, Roman, Rutherford, Swain, Watauga and Wayne. (1931, c. 392, s. 5; 1949, c. 64; 1957, c. 160; 1959, c. 230.)

Editor's Note.—
The 1959 amendment inserted "Beaufort" in the list of counties.

SUBCHAPTER V. GASOLINE TAX.

Article 36.

Gasoline Tax.

§ 105-437: Repealed by Session Laws 1963, c. 1169, s. 6, effective July 1, 1963.

Cross Reference.—As to administrative, penalty and remedy provisions applicable to taxes levied under this subchapter, see § 105-269.3.

§ 105-443: Repealed by Session Laws 1963, c. 1169, s. 5, effective July 1, 1963.

§ 105-446. Tax rebate on fuels not used in motor vehicles on highways.

(1) On or before September 30, 1962, application for reimbursement, as provided in this section on taxes paid under this article for the period from January 1, 1962, through June 30, 1962, and thereafter on or before September 30 of any subsequent fiscal year ending the preceding June 30 application for reimbursement as provided in this section on taxes paid under this article for the preceding fiscal year shall be filed with the Commissioner of Revenue. Such application shall be made upon such forms as the Commissioner of Revenue shall prescribe and the Commissioner of Revenue is hereby authorized to prescribe different forms of application for the several classes of uses for which said fuels may have been purchased, provided that as to all such applications for reimbursement the applicant shall be required to state whether or not such applicant has filed a North Carolina income tax return with the Commissioner of Revenue, and all such applications shall be sworn before an officer authorized to administer oaths; provided, however, that said application shall show on its face that the purchase price of the motor fuel therein referred to has been paid by applicant or that the payment of said purchase price has been secured to the seller's satisfaction.

(1961, cc. 480, 668.)

Editor's Note.—
The first 1961 amendment, effective July 1, 1962, rewrote the first sentence of subdivision (1) by changing the dates mentioned therein and substituting "fiscal year" for "calendar year" and the second 1961 amendment, effective July 1, 1961, added the proviso at the end of subdivision (1). As only this subdivision was changed the rest of the section is not set out.

§ 105-449. Exemption of gasoline used in public school transportation; false returns, etc.—(a) Any person, firm or corporation holding a North Carolina State contract for the sale of gasoline to be used in public school transportation in North Carolina shall invoice gasoline so sold and delivered to the county or city boards of education at the prevailing contract price, less the State tax on gasoline. A copy of such invoice showing the board of education to whom the gasoline is delivered, the kind of gasoline sold, the gallons sold, and the contract price per gallon, shall be submitted to the North Carolina Department of Revenue each month, supported with an official purchase order from the board or boards of education, which invoice or invoices and supporting purchase order shall exempt the gasoline purchased by said board or boards of education for use in North Carolina public school transportation from the seven cents tax per gallon State gasoline tax.

(b) The Commissioner of Revenue of North Carolina is hereby authorized and directed to accept such invoices and supporting purchase orders, duly notarized, in lieu of the seven cents per gallon tax imposed by the laws of North Carolina upon said gasoline: Provided, when any authorized dealer has already paid the State gasoline gallon tax and furnishes the Commissioner of Revenue with proper invoices and supporting purchase orders as required in subsection (a) of this section, then such dealer shall be entitled to a refund by the Commissioner of Revenue of seven cents per gallon from the gasoline fund for each gallon so sold and delivered to the county and city boards of education for use in public school transportation in school busses, service trucks, and gasoline delivery wagons used only for school purposes.

(c) It is the intent and purpose of this section to relieve gasoline used in the public school system of North Carolina from the seven cents gasoline tax now imposed by the State and thereby to that extent reduce the cost of public school transportation.

(d) The gasoline tax exemption provided by this section shall include gasoline sold for use in automobile owned by the school boards and furnished to school superintendents to be used only on official business, in public school activities busses, driver training vehicles, bookmobiles belonging to or operated by county libraries and in public school trucks, vehicles and implements used in public school buildings and grounds maintenance and repair as well as gasoline sold for use in school service trucks used to service school busses.

(e) Any person making a false return or affidavit for the purpose of securing a refund to which he is not entitled under the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars ($500.00), or imprisoned not exceeding two years, in the discretion of the court. (1941, c. 119; 1949, c. 1250, s. 13; 1959, c. 155.)

Editor's Note.—The 1959 amendment inserted references to city boards of education in subsections (a) and (b), redesignated former subsection (d) as (e) and inserted present subsection (d).

Article 36A.

Special Fuels Tax.

§ 105-449.24: Repealed by Session Laws 1963, c. 1169, s. 6, effective July 1, 1963.

Cross Reference.—As to administrative, penalty and remedy provisions applicable to taxes levied under this subchapter, see § 105-269.3.

§ 105-449.30. Refund for nonhighway use.—Any person who shall purchase fuel and pay the tax thereon pursuant to this article and use the same for purposes other than to propel vehicles operated or intended to be operated on the highway irrespective of whether originally purchased for such nonhighway use

or not, shall, upon making application therefor as herein provided, be reimbursed at the rate of six cents (6¢) per gallon. Such refund shall be paid only to persons who secure refund permits and otherwise comply insofar as practicable with the provisions of G. S. 105-446, relating to refunds, as modified by regulations of the Commissioner. (1955, c. 822, s. 1; 1963, c. 1169, s. 5.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, increased the rate of refund from five cents to six cents per gallon.

§ 105-449.34. Acts and omissions declared to be misdemeanors; penalties.

Editor's Note.—The above catchline is set out to correct an error in the replacement volume.

ARTICLE 36B.

Tax on Carriers Using Fuel Purchased Outside State.

§ 105-449.53: Repealed by Session Laws 1963, c. 1169, s. 6, effective July 1, 1963.

Cross Reference.—As to administrative, penalty and remedy provisions applicable to taxes levied under this subchapter, see § 105-269.3.

SUBCHAPTER VII. PAYMENTS RECEIVED FROM TENNESSEE VALLEY AUTHORITY IN LIEU OF TAXES.

ARTICLE 38.

Equitable Distribution between Local Governments.

§ 105-458. Apportionment of payments in lieu of taxes between local units.—The payments received by the State and local governments from the Tennessee Valley Authority in lieu of taxes under section 13 of the Act of Congress creating it, and as amended, shall be apportioned between the local governments in which the property is owned or an operation is carried on, on the basis of the percentage of loss of taxes to each, determined as hereinafter provided: Provided, however, that the minimum annual payment to any local government from said fund, including the amounts paid direct to said local government by the Authority, shall not be less than the amount of annual actual tax loss to such local government based upon the two-year average on said property next prior to its being taken over by the Authority. (1941, c. 85, s. 1; 1959, c. 1060.)

Editor's Note. — Prior to the 1959 amendment this section related to the apportionment of payments between the State and local governments.

§ 105-459. Determination of amount of taxes lost by virtue of T. V. A. operation of property; proration of funds.—The State Board of Assessment shall determine each year, on the basis of current tax laws, the total taxes that would be due to both the State of North Carolina and the local governments in the same manner as if the property owned and/or operated by the Authority were owned and/or operated by a privately owned public utility: Provided, however, in making said calculations the State Board of Assessment shall use the tax rate fixed by the local government unit and taxing district involved for the tax year next preceding such calculations. The State Board of Assessment and the Treasurer of the State of North Carolina shall then prorate the funds received from the Authority by the State and local governments between the local governments upon the basis of the foregoing calculations. (1941, c. 85, s. 2; 1959, c. 1060.)

Editor's Note. — Prior to the 1959 amendment this section related to the proration of funds between the State and local governments.

§ 105-460. Distribution of funds by State Treasurer.—The Treasurer of the State of North Carolina shall then ascertain the payments to be made to the local governments upon the basis of the provisions of § 105-459 and he is authorized and directed to distribute the same between the local governments in accordance with the foregoing provisions of § 105-459. The Treasurer of the State of North Carolina is further authorized and directed to pay said sums to the local governments each month or so often as he shall receive payments from the Authority, but not more often than once each month, after first deducting from any sum to be paid a local government such amount as has theretofore been paid direct to said local government by the Authority for the same period: Provided, however, that the minimum annual payment to any local government from said fund shall not be less than the average annual tax on the property taken by the Authority for the two years next preceding the taking. (1941, c. 85, s. 3; 1959, c. 1060.)

Editor's Note. — Prior to the 1959 amendment this section related to the payments to be made to the State and local governments.

§ 105-461. Duty of county accountant, etc.

Editor's Note. — Session Laws 1959, c. 1060, re-enacted this section without change.

§ 105-462. Local units entitled to benefits; prerequisite for payments.

Editor's Note.—Session Laws 1959, c. 1060, re-enacted this section without change.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1963

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1963 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON,
Attorney General of North Carolina